

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re: Application Serial No. 76/295724
Filed: August 6, 2001
For the Mark: BLUEMAN
Published in the *Official Gazette* on August 20, 2002

BLUE MAN PRODUCTIONS, INC.,
Opposer,
v.
ERICH TARMANN,
Applicant

Opposition No. 154,055

**MOTION TO DISMISS FOR
FAILURE TO PROSECUTE, FOR
JUDGMENT ON THE PLEADINGS,
OR ALTERNATIVELY, FOR
SUMMARY JUDGMENT**

01 FEB 23 PM 4:06
UNITED STATES PATENT AND TRADEMARK OFFICE

Box TTAB NO FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Pursuant to 37 CFR §§ 2.132(b) and Rules 12(c) and 56, Fed. R. Civ. Proc., Erich Tarmann (“applicant”) moves to dismiss the above-referenced Opposition of Blue Man Productions, Inc. (“opposer”) for failure to prosecute, for judgment on the pleadings, or alternatively, for summary judgment. By finally adjudicating the Opposition on the basis of procedural deficiencies and/or substantive merit prior to final hearing, applicant seeks to avoid delay in obtaining registration of his mark, as well as to avoid the expense and inconvenience of trial, briefing, and final hearing.

I. Background of the Parties

Applicant is a European citizen. On August 6, 2001, he filed the subject United States trademark application for registration of **BLUEMAN**¹ in International Class 34 for

¹ The mark BLUEMAN was derived from the word blumen, which means “flower” in German. Applicant first considered adopting BLUEMEN for his cigarettes but subsequently adopted the singular form of the mark, BLUEMAN. See Exhibit 3, Interrogatory Answer No. 3(c).

use in connection with tobacco products and smoker's articles.² See, Exhibit 1. The application included specimens in the nature of cigarette packaging labels, one of which (**BLUEMAN American Blend**) is attached hereto as Exhibit 2. In the U.S. application, first use in the United States commerce was claimed "at least as early as March 6, 2000," although applicant began shipping cigarettes bearing the **BLUEMAN** trademark in U.S. commerce in Spring 1999. See Exhibit 4, Interrogatory Answer No. 9(a).

Applicant sought registration of a U.S. trademark based on his activities in Europe where he previously adopted in March 1997 and began marketing cigarettes under the **BLUEMAN** mark. See Exhibit 4, Interrogatory Answer No. 4(a). On October 1, 1997, Applicant obtained a registration for the trademark "**BLUEMAN American Blend**" in Switzerland, Register No. 171,796. See Exhibit 5. Applicant also obtained a certificate of registration for the same mark under the Madrid Protocol on December 4, 1997.³ See Exhibit 6.

After duly examining applicant's request for registration, the trademark examiner approved the request for registration on July 31, 2002, and the **BLUEMAN** mark was duly published for opposition on August 20, 2002.

On December 2, 2002, well beyond the 30-day notice period for filing an opposition, opposer, Blue Man Productions, Inc., a New York-based entity, submitted a notice of opposition contesting registration of applicants' **BLUEMAN** trademark.⁴ Opposer filed the present Opposition claiming that it would be injured by registration of **BLUEMAN** for tobacco products. In the Notice of Opposition, opposer purports to have obtained United States trademark registrations in 2001 and 2002 for the mark **BLUE MAN GROUP** for entertainment services, apparel, and musical sound recording. Even though the parties do not compete in the same market channel, opposer nevertheless

² Applicant, however, abandoned earlier-filed intent-to-use application Serial No. 75/847630 for the **BLUEMAN** mark, which was filed November 10, 1999. See Exhibit 3.

³ The United States acceded to the Madrid Protocol on August 2, 2003.

⁴ Certain anomalies occurred during opposer's 30-day notice period that resulted in a belated approval of requests to extend the opposition period and notice to applicant more than four months after the opposition period. See letter dated December 26, 2002, from Jamila Wong, Legal Assistance of the TTAB.

contends there would be a “likelihood” of confusion, mistake, or deception between the **BLUEMAN** mark for tobacco products and **BLUE MAN GROUP** for entertainment services, apparel, and sound recordings.

On December 26, 2003, the Board instituted the present opposition proceeding.

In the Notice of Opposition, opposer contends

(i) that applicant’s **BLUEMAN** mark so resembles opposer’s **BLUE MAN GROUP** mark, so as to be likely, when applied to [tobacco products and smoker’s articles], to cause confusion, to cause mistake, and to deceive ... (Para. 10, Notice of Opposition), and

(ii) that the **BLUE MAN GROUP** mark is ... famous and distinctive,⁵ ... [and] that applicant’s **BLUEMAN** mark will dilute the distinctive quality of the **BLUE MAN GROUP** mark (Para. 11, Notice of Opposition).

Nowhere in the Notice of Opposition does opposer claim “actual” injury or damage, or that its mark has been “actually” diluted, despite applicant’s prior use in United States commerce of the **BLUEMAN** mark for cigarettes.

II. Dismissal for Failure to Prosecute

During the course of the Opposition proceedings, the parties stipulated to extend opposer’s testimony period from October 12, 2003, the date initially set by the Board, to January 22, 2004. Applicant’s testimony period is currently set to close March 22, 2004. As indicated above, applicant seeks to avoid costs associated with taking testimony and briefing, and thus submits the present motion to dismiss under 37 CFR §2.132(b) for failure to prosecute or to dismiss the Opposition on other legal grounds.

⁵ Opposer does not claim fame or distinctiveness before applicant’s actual use, i.e., “*at least as early as* March 6, 2000” -- the date alleged in the referenced application. In fact, very little of the purported evidence identified in opposer’s Notice of Reliance shows publicity before applicant’s use of the **BLUEMAN** mark in the United States and Europe.

During its testimony period, opposer took no steps to adduce any meaningfully evidence. Opposer offered no oral testimony from witnesses to authenticate documents or to overcome any hearsay or other evidentiary exclusions; no expert testimony regarding any degree of inherent or acquired distinctiveness of its own mark; no surveys relative to any degree of acquired recognition; no evidence regarding expenditures on advertising; no evidence of any extent of dilution; no evidence of harm, injury, or lessened capacity of or erosion of distinctiveness of its mark; no evidence that any of the purported publications (or videotapes) were, in fact, circulated or the place and number of any such circulation; no evidence of confusion; and no evidence on the nature and extent of use (or the lack thereof) of similar marks by third parties. Opposer failed to notice a single deposition, including any deposition of applicant either by written questions or oral examination. Despite a three-month extension of the testimony period, opposer simply took no meaningful steps to prove its case other than to identify three of its U.S. trademark registration in a first Notice of Reliance.⁶

Rule 2.132(b) provides:

If no evidence other than a copy or copies of Patent and Trademark Office records is offered by any party in the position of plaintiff, any party in the position of defendant may, without waiving the right to offer evidence in the event the motion is denied, move for dismissal on the ground that upon the law and the facts the party in the position of the plaintiff has shown no right to relief.

The three trademark registrations identified by opposer's first Notice of Reliance⁷ do not make out a prima facie case for relief. In the identified registrations, first use for entertainment services was alleged to have occurred in 1988. Opposer, however,

⁶ The motion to dismiss under Rule 1.132(b) presumes the second Notice of Reliance has no operative effect and will be stricken. To explain, on January 26, 2004, applicant received the first Notice of Reliance (purportedly mailed January 21, 2004) identifying three trademark registrations along with certified copies thereof. No other evidence was identified at that time. On January 29, applicant received a second Notice of Reliance (also purportedly mailed January 21, 2004) identifying a number of publicity articles and videotape media. Apart from an apparent tardiness of the second Notice of Reliance, a lack of "printed publication" status of videotapes supplied therewith, the absence of self-authenticating documents or authenticating testimony, and a failure to comply with Rule 2.122(e) by indicating relevance of the identified material, opposer's second Notice of Reliance is objectionable and fails to meet evidentiary requirements for purposes of the motion to dismiss under Rule 2.132(b).

provided no independent and admissible evidence of such use. Allegations of use of a mark in a registration are not evidence, as such date of use must be shown independently by competent evidence. See, Rule 2.122(a)(2). Because opposer neither offered nor took steps to offer competent evidence of any use prior to applicant's adoption and use, the identified registrations lack probative evidentiary weight.

Assuming opposer's second Notice of Reliance overcomes the objections of Rule 2.122(e), it still lacks probative weight as a matter of law. A reading of opposer's Notice of Opposition suggests that registration of **BLUEMAN** "may dilute" a distinctive quality of the **BLUE MAN GROUP** mark and "may tend to damage Opposer's valuable goodwill and reputation." See Notice of Opposition, Para. 11-12. On March 4, 2003, however, subsequent to the filing of the Notice of Opposition on December 3, 2003, the United States Supreme Court, in *Moseley, et al. v. V Secret Catalogue, Inc.*, 123 S.Ct. 1115, 155 L.Ed.2d 1, 537 U.S. ___ (2003), interpreted the Federal Trademark Dilution Act to preclude the relief requested by opposer.⁸ The Supreme Court stated that the text of the Act "unambiguously requires a showing of actual dilution, rather than a likelihood of dilution." *Id.*, at 1124. In addition, the mere fact that consumers mentally associate the [contested mark] with a famous mark⁹ "is not sufficient to establish actionable dilution." *Id.*, at 1124.

Assuming opposer's mark was indeed famous, which it is not, allegations concerning dilution and harm are purely speculative and fail to meet the *Moseley* standards. In para. 11 of the Notice of Opposition, opposer alleges that the **BLUEMAN** mark *will dilute* the distinctive quality of the **BLUE MAN GROUP** mark. In para. 12, opposer alleges that it *would be injured* by granting applicant's registration because it *may tend to damage* opposer's goodwill and reputation. In its prayer for relief, opposer *believes that it will be damaged by registration of Applicant's mark*. Nowhere in the Notice of Opposition, however, does opposer allege "actual" or "completed" dilution,

⁷ Opposer identified Reg. Nos. 2,438,222; 2,450,660; and 2,617,550 all for the mark BLUE MAN GROUP.

⁸ Prior to the Court's decision in *Moseley*, conflict existed among the regional circuits as to whether "actual" or "the likelihood of" dilution was required to support a claim for relief.

harm, or injury, which is legally required to support the requested relief. The Supreme Court decided *Moseley* on March 4, 2003, during pendency of the Opposition, yet opposer took no steps to amend the Notice of Opposition of December 3, 2002. Opposer also failed to take steps to introduce evidence of actual or completed dilution, harm, or injury before the close of the testimony period on January 22, 2004.

To require applicant to continue these proceedings in light of opposer's failure to prosecute under the applicable legal standards would be unjust, and consume needless resources and time. For this among other reasons, applicant respectfully requests that the Board dismiss the Opposition with prejudice.¹⁰

III. Dismissal by Judgment of the Pleadings or Summary Judgment

No facts are disputed. For purposes of this motion only, applicant assumes each document identified by opposer evidences what it purports to show on its face, but not the truth of its contents, that any such document or media was publicly circulated, or that any member of the public gain any familiarity with opposer's mark through the purported publication or broadcasts. Any additional evidence that opposer may submit in response to this motion would not change the final outcome since its testimony period is now closed.¹¹

As such, applicant urges the Board to summarily dismiss the Opposition under Rule 12(c) or Rule 56, Fed.R.Civ.Proc., for reason that all the evidence of record, including opposer's evidence identified by both its first and second Notices of Reliance, taken in its best light and accepted as true for what it shows on its face, does not justify a refusal to register applicant's **BLUEMAN** mark on the Principal Register. See, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); and *T.A.B. Systems v. PacTel Teletrac*, 77 F.3d 1372, 37 USPQ2d 1879, 1881

⁹ Opposer did not offer admissible evidence pertaining to alleged fame.

¹⁰ If actual dilution and injury is shown subsequent to dismissal, opposer it might be able to proceed by way of cancellation if it can meet other requirements of proof, such as acquired fame and distinctiveness prior to applicant's actual or constructive use of **BLUEMAN** in U.S. commerce.

(Fed. Cir. 1996). As stated above, the Supreme Court's *Moseley* decision renders moot issues that opposer initially raised by the Notice of Opposition,¹² i.e., a "likelihood" of dilution, as pleaded, is no longer actionable. None of opposer's evidence even if it survives the concurrently filed motion to strike will support the Opposition. If opposer is permitted to amend the Notice of Opposition to recite "actual" dilution, harm, or confusion, the Board still should summarily dismiss the Opposition because no admissible evidence was offered during opposer's testimony period to show "actual" dilution, harm, or injury.

The Board indeed has power to dismiss the Opposition when the evidence fails to raise a genuine issue of material fact. See, *Sweats Fashions Inc. v. Panmill Knitting Co.*, 833 F.2d 1560, 4 USPQ2d 1793 (Fed. Cir. 1987). Applicant may also carry its burden in a summary judgment motion by showing a complete absence of evidence on the part of opposer. See, *Celotex v. Catrett*, 477 U.S. 317 (1986) (no requirement that moving party support its motion with affidavits or other similar materials negating the opponent's claim but may be based on nonmovant's failure to make sufficient showing as to its own case on which it has the burden).

As set forth above, applicant initially conceived the **BLUEMAN** mark as early as autumn 1996 in Vienna, Austria. Exhibit 4, Interrogatory Answers 3(a) and 4(a). The term **BLUEMAN** was derived from the word "blumen," which means "flower" in the German language. Applicant first considered adopting **BLUEMEN** for tobacco products (Exhibit 7), but later adopted the singular form of the mark **BLUEMAN**. Exhibit 4, Interrogatory Answer 3(c). Applicant then registered the **BLUEMAN** mark as a trademark in Switzerland and under the Madrid Protocol in October and December 1997, respectively. Exhibit 4, Interrogatory Answer 3(c). Applicant also registered the **BLUEMAN** mark in Austria in April 1997 (Exhibit 4, Interrogatory Answer 5(b)) and

¹¹ The Board may consider additional evidence submitted by opposer for purposes of the instant motion only, but that evidence will not become part of the record for determination at any final hearing. See, §528.05(a), TBMP.

¹² Applicant would have earlier sought summary dismissal of the Opposition due to inadequacy of pleadings under Rule 12(c), Fed.R.Civ.P., but that situation did not clearly exist before the Supreme Court

began transporting cigarette products to the United States in U.S. commerce as least as early as spring 1999 (Exhibit 4, Interrogatory Answer 9(a)). Prior to 1997, the mark **BLUE MAN GROUP** was not known in Europe, and further, applicant was not aware of that mark prior to notification of the present Opposition in December 2002. Exhibit 4, Interrogatory Answer 6.

Under Rule 56, Fed.R.Civ.Proc., the Board may dismiss the Opposition when it is shown that no genuine issue of material fact exist. Under Rule 12(c), Fed.R.Civ.Proc, the Board may also grant judgment on the pleadings. For purposes of the motion, the Board may assume as true the allegations of the Notice of Opposition and treat those allegations in favorable light, resolving any factual disputes against the movant. Here, there are no factual disputes.

For purposes of the summary judgment motion, it is assumed that opposer has obtained trademark registrations for **BLUE MAN GROUP** for entertainment services, sound recordings, and apparel in 2001 and 2002. It is also assumed that, at some unspecified point in time, the **BLUE MAN GROUP** mark became famous. Applicant seeks a United States trademark registration of **BLUEMAN** for tobacco products. Applicant obtained registrations for **BLUEMAN** for tobacco products in certain European countries and under the Madrid Protocol in 1997. Applicant's first use of the **BLUEMAM** mark in U.S. commerce occurred in Spring 1999. The parties do not compete. There is a "likelihood" of dilution, harm, or injury to opposer. Under the foregoing set of facts, no relief can be granted since opposer neither pleaded nor produced evidence of "actual" dilution, harm, or injury.

Because no relief may be had as a matter of law, applicant does not believe any useful purpose would be served by continuing with a costly evidentiary and briefing schedule. Further, no useful purpose would be served by reopening the testimony period of opposer to introduce addition evidence. Reopening the opposer's testimony period

decided *Moseley, et al. v. V Secret Catalogue, Inc.*, 537 U.S. ____ (2003) and after opposer had an opportunity to submit evidence of actual dilution, harm, or injury.

would be unfair and prejudicial to applicant as this would add further delay and costs to defending the Opposition.

Accordingly, applicant requests summary dismissal of the Opposition, with prejudice.

Respectfully submitted,

Counsel for Applicant
ERICH TARMANN



Lawrence Harbin, D.C. Bar # 236190
Amy M. Jones-Baskaran, D.C. Bar # 417293
McIntyre Harbin & King LLP
500 Ninth Street, S.E.
Washington, D.C. 20003
Tel. 202-546-1100 Fax 202-543-9230

2/23/2004
Date

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a copy of the foregoing motion to dismiss for failure to prosecute, for judgment on the pleadings, or alternatively, for summary judgment, was mailed on this 23 day of February, first-class, postage prepaid to counsel for opposer at the following address:

Robert W. Clarida, Esq.
Cowan, Liebowitz & Latman, P.C.
1122 Avenue of the Americas
New York, New York 10036-6799

2/23/2004
Date



Lawrence Harbin

Exhibit 1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK APPLICATION WITH DECLARATION
PRINCIPAL REGISTER

MARK: BlueMan

INT. CL.: 34

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

Applicant, Erich Tarmann, a citizen of Austria, who resides at
Wallmodengasse 11, Vienna 1190, Austria.

The above-identified applicant has adopted and is using the Trademark BlueMan, shown in the accompanying drawing, in International Class 34 for Tobacco; smokers articles including cigarettes and tobacco products; and requests that said mark be registered in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. § 1051 et seq., as amended).

The Trademark BlueMan was first used in connection with the goods in International Class 34 at least as early as March 6, 2000; was first used in interstate commerce in International Class 34 at least as early as March 6, 2000; and is now in use in such commerce. The mark was used by placing the mark directly on packaging embodying the goods and shipping substantial quantities of the goods in interstate commerce (i.e., directly from Austria through the

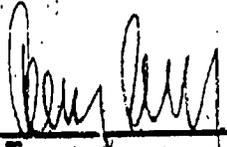


Netherlands to Las Vegas, Nevada) for distribution in the United States of America at least as early as March 6, 2000. Three specimens (cigarette packaging) showing the mark as actually used in commerce in connection with the goods are presented herewith.

DECLARATION

The undersigned, Erich Tarmann, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any registration resulting therefrom, declares that he is the applicant and owner of the mark sought to be registered; to the best of his knowledge and belief no other person, firm, corporation, or association has the right to use said mark in commerce, either in the identical form or in such near resemblance thereto as may be likely, when applied to the goods or services of such other person, to cause confusion, or to cause mistake, or to deceive; the facts set forth in this application are true; and all statements made of his own knowledge are true and all statements made on information and belief are believed to be true.

Dated: 03 AUGUST 2001


Erich Tarmann
43.1.368.55.1314 tel.
43.1.368.55.1313 fax

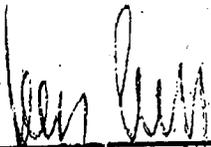
THE COMMISSIONER IS HEREBY AUTHORIZED TO CHARGE
ANY DEFICIENCY OR CREDIT ANY OVERPAYMENT TO
DEPOSIT ACCOUNT NO. 06-0115.

POWER OF ATTORNEY

The undersigned hereby appoints Lawrence Harbin of the firm of McIntyre Harbin & King LLP, located at One Massachusetts Avenue, N.W., Suite 330, Washington, D.C. 20001, and its associates and Of Counsel attorneys to prosecute this application to register, to transact all business in the Patent and Trademark Office in connection therewith, and to receive the certificate.

Applicant

Dated: 03. AUGUST 2001



Erich Tarmann
+3.1.363.55.1314 tel.
+3.1.363.55.1313 fax

DRAWING PAGE

APPLICANT'S NAME: Erich Tarmann

APPLICANT'S ADDRESS: Wallmodengasse 11
Vienna 1190
AUSTRIA

INTERNATIONAL CLASS: 34

GOODS AND SERVICES: Tobacco; smokers articles

DATE OF FIRST USE: March 6, 2000

DATE OF FIRST USE
IN COMMERCE: March 6, 2000

BlueMan



BlueMan
AMERICAN BLEND

100's

BlueMan

100's

BlueMan
AMERICAN BLEND



SURGEON GENERAL'S WARNING:
Quitting Smoking Now Greatly
Reduces Serious Risks to Your Health.

BlueMan



79384 100066

Blend of fine tobaccos
made in Holland
BY BLUE HOLDINGS LTD

BlueMan



20 CLASS A FILTER CIGARETTES

20 CLASS A
CIGARETTES

UNDERAGE
SALE
PROHIBITED

BlueMan

LIGHTS

20 CLASS A FILTER CIGARETTES



BlueMan

LIGHTS

100's

BlueMan

LIGHTS

100's

BlueMan

LIGHTS



SURGEON GENERAL'S WARNING:
Quitting Smoking Now Greatly
Reduces Serious Risks to Your Health.

BlueMan
AMERICAN SMOKERS

Blend of fine Tobaccos
made in Holland
by BLUE HOLDINGS LTD.

BlueMan
AMERICAN SMOKERS
lights in case

9 7584 00067

ULTRA LIGHT

20 CLASS A
CIGARETTES

UNDERAGE
SALE
PROHIBITED

BlueMan

ULTRA LIGHT



BlueMan

100's

BlueMan

100's

BlueMan



BlueMan
ultra light
in taste
Blend of fine Tobaccos
made in Holland
by BLUE HOLDINGS LTD.

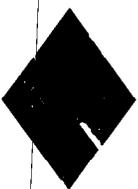
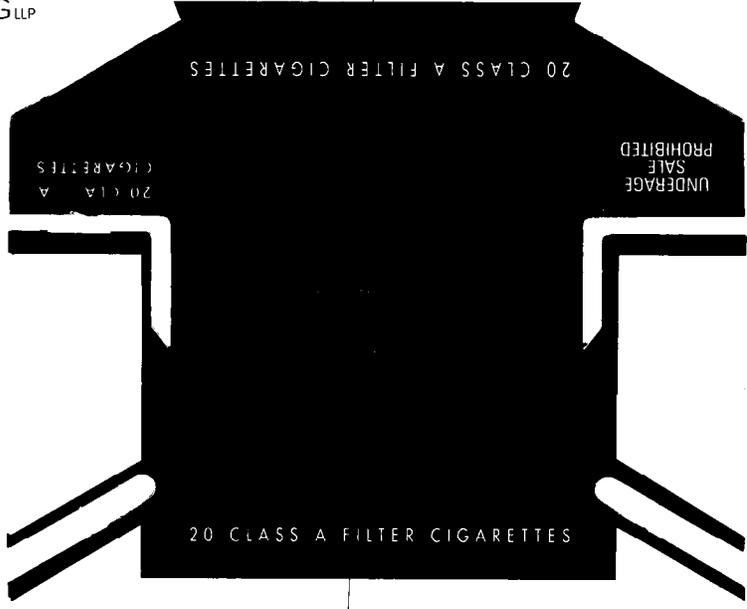


SURGEON GENERAL'S WARNING:
Cigarette Smoke Contains
Carbon Monoxide.

BlueMan
ultra light
in taste

Exhibit 2

5



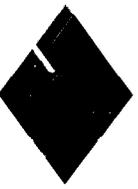
BlueMan
AMERICAN BLEND

100's

BlueMan

100's

BlueMan
AMERICAN BLEND



Blend of fine Tobaccos
made in Holland
by BLUE HOLDINGS LTD.

BlueMan
AMERICAN BLEND

SURGEON GENERAL'S WARNING:
Smoking By Pregnant Women May
Result in Fetal Injury, Premature Birth,
And Low Birth Weight.

BlueMan
AMERICAN BLEND



Exhibit 3



U.S. Trademark Electronic Search System (TESS)

TESS was last updated on Sat Feb 17 04:22:35 EST 2001

HOME TRADENAME TESS HOME NEW USER STRUCTURE FEEL FORM SEARCH OPT RETURN HELP

Logout Please logout when you are done to release system resources allocated for you.

Record 1 out of 1

Check Status

(TARR contains current status, correspondence address and attorney of record for this mark. Use



the "Back" button of the Internet Browser to return to TESS)

Word Mark 20 CLASS A FILTER CIGARETTES BLUEMAN AMERICAN BLEND ← NOT CORRECT
Goods and Services (ABANDONED) IC 034. US 002 008 009 017. G & S: cigarettes (brand and trademark) ONLY BLUEMAN

Mark Drawing Code (3) DESIGN FLLS WORDS, LETTERS, AND/OR NUMBERS]✓

Design Search Code 020101 020131 020902 260701 261102 261110 261121

Serial Number 75847630

Filing Date November 10, 1999

Filed ITU FILED AS ITU

Owner (APPLICANT) Tarnann, Erich INDIVIDUAL AUSTRIA Wallmodengasse 11 Vienna AUSTRIA 1190

Section 44 Indicator SECT44

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BlueMan" APART FROM THE MARK AS SHOWN

Description of Mark "The mark consists of Bold lettering with capital letters for the B and M (in BlueMan) accompanied by a logo picturing a face of a man (in different shades of blue)."

Type of Mark TRADEMARK

Register PRINCIPAL

Other Data cigarettes, global registration specifically within the total US. "The name(s), portrait and/or signature(s) shown in the mark does not identify a particular living individual, whose consent(s) to register will be submitted."

Live/Dead Indicator DEAD

Abandonment Date October 24, 2000

HOME TRADENAME TESS HOME NEW USER STRUCTURE FEEL FORM SEARCH OPT RETURN HELP



Internet Connection Info:

Thank you for your request. Here are the latest results from the TARR web server.

Serial Number: 75847630

Registration Number: (NOT AVAILABLE)

Mark



(words only): 20 CLASS A FILTER CIGARETTES BLUEMAN AMERICAN BLEND

Current Status: Abandoned: Applicant failed to respond to an Office action.

Date of Status: 2000-12-04

Filing Date: 1999-11-10

Registration Date: (DATE NOT AVAILABLE)

Law Office Assigned: TMEG Law Office 105

CURRENT APPLICANT(S)/OWNER(S)

I. Tarmann, Erich

GOODS AND/OR SERVICES

cigarettes (brand and trademark)

PROSECUTION HISTORY

2000-12-04 - Abandonment - Failure to respond

2000-04-21 - Non-final action mailed

2000-04-20 - Case file assigned to examining attorney

2000-04-04 - Case file assigned to examining attorney

CONTACT INFORMATION

Address:
LUIS J. CHECA
5157 WESTBARD AVE.
BETHESDA, MD 20816
US

Trademark/Service Mark Application

Page 1 of 2

PTO Form 1478 (Rev. 098)
OMB No. 0651-0008 (Exp. 08/31/01)*** Trademark/Service Mark Application ****** To the Assistant Commissioner for Trademarks ***

<DOCUMENT INFORMATION>
 <TRADEMARK/SERVICEMARK APPLICATION>
 <VERSION 1.2>

<APPLICANT INFORMATION>
 <NAME> Erich Tarmann
 <STREET> Wallmodengasse 11
 <CITY> Vienna
 <STATE> Vienna
 <COUNTRY> Austria
 <ZIP/POSTAL CODE> 1190
 <TELEPHONE NUMBER> 43 1 368 5513
 <FAX NUMBER> 43 1 368 5513 13
 <E-MAIL ADDRESS> et-trading@aon.at

<APPLICANT ENTITY INFORMATION>
 <INDIVIDUAL: COUNTRY OF CITIZENSHIP> Austria

<TRADEMARK/SERVICEMARK INFORMATION>
 <MARK>
 <TYPED FORM> No

~ Applicant requests registration of the above-identified trademark/service mark in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. §1051 et seq., as amended). ~

<BASIS FOR FILING AND GOODS/SERVICES INFORMATION>
 <INTENT TO USE: SECTION 1(b)> Yes

~ Applicant has a bona fide intention to use the mark in commerce on or in connection with the below-identified goods/services. (15 U.S.C. §1051(b), as amended). ~

<LISTING OF GOODS AND/OR SERVICES> cigarettes (brand and trademark)

<BASIS FOR FILING AND GOODS/SERVICES INFORMATION>

<FOREIGN REGISTRATION: SECTION 44(e)> Yes
 <LISTING OF GOODS AND/OR SERVICES> cigarettes
 <COUNTRY OF FOREIGN REGISTRATION> Switzerland
 <FOREIGN REGISTRATION NUMBER> 682457
 <FOREIGN REGISTRATION DATE> 10/01/1997
 <FOREIGN REGISTRATION EXPIRATION DATE> 10/01/2007

<OPTIONAL INFORMATION>

<DISCLAIMER> "No claim is made to the exclusive right to use BlueMan apart from the mark as shown."

<DESCRIPTION OF THE MARK> "The mark consists of Bold lettering with capital letters for the B and M (in BlueMan) accompanied by a logo picturing a face of a man (in different shades of blue)."

<NAME(S), PORTRAIT(S), SIGNATURE(S) OF INDIVIDUAL(S)> "The name(s), portrait

(s), and/or signature(s) shown in the mark does not identify a particular living individual, whose consent(s) to register will be submitted."

<CONCURRENT USE> cigarettes, global registration specifically within the total US.

<DOMESTIC REPRESENTATIVE FOR FOREIGN APPLICANT>

<NAME> Luis J. Checa
<STREET> 5157 Westbard Ave.
<CITY> Bethesda
<STATE> MD
<ZIP CODE> 20816
<TELEPHONE NUMBER> 301-229-6430
<E-MAIL ADDRESS> ccheca@erols.com

~ is hereby appointed applicant's representative upon whom notice or process in the proceedings affecting the mark may be served ~

<FEE INFORMATION>

<TOTAL FEES PAID> 245
<NUMBER OF CLASSES> 1

<SIGNATURE AND OTHER INFORMATION>

~ **PTO-Application Declaration:** The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. §1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true. ~

<SIGNATURE> _____ * please sign here*

<DATE> _____

The information collected on this form allows the PTO to determine whether a mark may be registered on the Principal or Supplemental register, and provide notice of an applicant's claim of ownership of the mark. Responses to the request for information are required to obtain the benefit of a registration on the Principal or Supplemental register. 15 U.S.C. §§1051 et seq. and 37 C.F.R. Part 2. All information collected will be made public. Gathering and providing the information will require an estimated 12 or 15 minutes (depending if the application is based on an intent to use the mark in commerce, use of the mark in commerce, or a foreign application or registration). Please direct comments on the time needed to complete this form, and/or suggestions for reducing this burden to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington D.C. 20231. Please note that the PTO may not conduct or sponsor a collection of information using a form that does not display a valid OMB control number.

Exhibit 4

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re: Application Serial No. 76/295724
Filed: August 6, 2001
For the Mark: BLUEMAN
Published in the *Official Gazette* on August 20, 2002

BLUE MAN PRODUCTIONS, INC.,
Opposer,

v.

ERICH TARMANN,
Applicant

ANSWERS AND RESPONSES
TO INTERROGATORIES

Box TTAB NO FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

General Objections

1. Applicant objects to the interrogatories as their number, including subparts, exceed the number of interrogatories permitted under the Rules of Practice of the United States Patent and Trademark Office.
2. Applicant also objects to the interrogatories for reason that they are not limited in time and/or seek to embrace information outside the relevant scope or period of time concerning the opposition.
3. Applicant further objects to the interrogatories as being overly burdensome and calling for information readily obtainable from public document and/or documents produced by Applicant.



4. Applicant further objects to the interrogatories as exceeding the scope of permissible discovery and embracing activities or calling for documents generated outside the United States.
5. Applicant further objects to the interrogatories as calling for third-party information beyond the control, possession, or custody of Applicant.
6. Applicant further objects to the interrogatories as calling for information that is irrelevant or calling for information that is not reasonably calculated to lead to the discovery of admissible or relevant information concerning issues to be decided by the Trademark Trial and Appeal Board.
7. Applicant objects to opposer's "Definitions and Instructions" as invoking overly broad requests and definitions that have the effect of widening the scope of discovery beyond that permitted by the Federal Rules of Civil Procedure and the Rules of Practice of the United States Patent and Trademark Office.
8. Applicant further objects to each discovery request as calling for information protected by the attorney-client privilege and/or information that is protected under the attorney work-product doctrine.
9. Applicant further objects to the requested discovery requests as being vague, ambiguous, and indefinite.
10. Applicant further objects to the discovery as calling for information that is not relevant to issues or purported issues in this proceeding, and further, as not being reasonably calculated to lead to evidence admissible in any proceeding before the Trademark Trial and Appeal Board. In particular, applicant objects to certain interrogatories as calling for financial and sale information that have no bearing on any issues to be decided by the Trademark Trial and Appeal Board.

11. Applicant further objects to the interrogatories and discovery requests to the extent that they call for information occurring or existing outside the United States.

Answers and Responses

Interrogatory No. 1

Identify all the companies with which Applicant is now or has ever been affiliated and all parent, affiliated, and related companies; all prior names of Applicant; and all names by which Applicant has done business.

Answer and Response

In addition to the general objections, Applicant objects to Interrogatory No. 1 as being overly broad, seeking irrelevant information that is not reasonably calculated to lead to discoverable information, and/or as calling for information beyond the scope of permissible discovery.

To the extent not unobjectionable and without wavier, Applicant is affiliated with and has done business with respect to the products and/or services specified in the referenced trademark application in the name of Blue Holdings Ltd. and ET Trading, which are both situated in Vienna, Austria. To the extent referred to in documents produced by Applicant, other names may have been used to do business.

Interrogatory No. 2

Identify Applicant's present and former business partners, officers, directors, employees, and agents most knowledgeable about the manufacture, advertisement, sale and distribution of products under the trademark BLUEMAN, whether alone or in combination with other terms or devices, and, for each person so identified, state:

- (a) the period of time during which he or she had such responsibility; and
- (b) the nature of such person's responsibility.

Answer

Applicant has no such business partners, officers, directors, employees or agents.

Interrogatory No. 3

With respect to Applicant's selection and/or adoption of the trademark BLUEMAN;

- (a) Identify the person or persons responsible for such selection and/or adoption,
- (b) State the date on which such selection and/or adoption occurred; and
- (c) State the reason or reasons for such selection and/or adoption.

Answer and Response

In addition to the general objections, applicant further objects to Interrogatory No. 3 as calling for privileged information protected by attorney-client or under the work-product doctrine. To the extent not objectionable and without waiver, applicant provides the following response:

- (a) Erich Tarmann.
- (b) The mark BlueMan was originally conceived in as early as autumn of 1996 in Vienna, Austria.
- (c) The word BlueMan was associated with the German word 'Blumen' meaning 'flower,' providing the initial basis for adopting and using BlueMan for applicant's tobacco products. Because males were the primary targeted market for applicant's products, the mark BlueMan was adopted to compete with other brands such as the Marlboro man to convey the image of a male-targeted audience. Initially Applicant created the mark BlueMen to more closely correspond with the German term "Blumen" but changed the mark during design stage to use the singular form of the word "BlueMan." In 1997, the BlueMan mark was registered Europe under both Austrian law and under the Madrid Protocol. Thus, applicant's first adoption and use in the United States was predicated on prior adoption and use of the same mark in Europe and elsewhere.

Interrogatory No. 4

If any other trademarks (and/or variations of the same trademark were considered by Applicant for selection and/or adoption instead of or in addition to the trademark BLUEMAN:

- (a) Specify each other trademark and/or variation of the trademark BLUEMAN that was so considered;
- (b) State the reason or reasons that each other trademark and/or variation of the trademark BLUEMAN that was so considered was not selected and/or adopted; and
- (c) Identify the person or persons most knowledgeable about the reason or reasons that any other trademark and/or variation of the trademark BLUEMAN that was so considered was not selected and/or adopted.

Answer and Response

In addition to the general objections, applicant further objects to Interrogatory No. 4 as calling for privileged information protected by attorney-client or under the work-product doctrine. To the extent not objectionable and without waiver, applicant provides the following response:

- (a) Between autumn of 1996 and March 1997, applicant considered adopting and using the mark BlueMen for his tobacco products. This was modified sometime before March 1997 to the mark BlueMan. After deciding to finally adopt the mark BlueMan, applicant proceeded with national registration of the mark and did not consider other variations.
- (b) After adopting the mark BlueMan, no variation of the mark was considered.
- (c) Erich Tarmann.

Interrogatory No. 5

If, prior to Applicant's use of the trademark BLUEMAN in connection with products distributed in the United States, Applicant conducted or caused to be conducted a search or any other type of investigation in order to ascertain whether Applicant's adoption or use of the trademark BLUEMAN in connection with such products might infringe or conflict with the mark of, or use of the term BLUEMAN by, another:

- (a) Identify each such search or investigation conducted;
- (b) State the date on which such search or investigation was conducted;

- (e) Identify the person who conducted the search or investigation and state that person's qualifications;
- (d) Identify the person who requested the search or investigation; and
- (e) State the records or publications searched or investigated (and/or, if some other search method was employed, how the search or investigation was conducted).

Answer and Response

In addition to the general objections, applicant further objects to Interrogatory No. 5 as calling for privileged information protected by attorney-client or under the work-product doctrine, or information that is not relevant or reasonably calculated to lead to admissible evidence or other discoverable information. To the extent unobjectionable and without waiver, applicant provides the following response:

- (a) A worldwide search for the mark "BlueMan" was conducted in March 1997. The results of the search revealed no conflict and allowed applicant to protect the mark in 1997, as aforesaid.
- (b) March 1997 (Austrian trademark secured April 29, 1997).
- (c) Dr. Nemetz, Attorney, Vienna, Austria.
- (d) Erich Tarmann, creator of the brand.
- (e) Upon information and belief, Dr. Nemetz conducted search via the Austrian Trademark and Patent Agency (a governmental agency for searching and securing trademark names). This is an official agency that provides worldwide searches on a particular name to insure whether the name is trademarked anywhere in the world.

Interrogatory No. 6

State whether, prior to Applicant's use of the trademark BLUEMAN in connection with products distributed in the United States, Applicant was aware of Opposer's use of the term BLUE MAN GROUP in connection with any one or more of Opposer's Goods and Services. If so:

- (a) Specify each one of Opposer's Goods and Services of which Applicant was aware;
- (b) Identify each person with such knowledge or awareness; and

State the means by which such person gained such knowledge or awareness.

Answer

Prior to Applicant's adoption and use of BlueMan in the United States, Applicant was not aware of the Blue Man Group. Further, Applicant was not aware of the mark Blue Man Group prior to notification of the present opposition. Upon information and belief, the name Blue Man Group was not used or known in Europe prior to 1997.

Interrogatory No. 7

State whether, prior to Applicant's use of the trademark BLUEMAN in connection with products distributed in the United States, Applicant was aware of Opposer's use of the mark BLUE MAN GROUP in connection with any services or products other than opposer's goods and services. If so:

- (a) Specify each type of product or service of which Applicant was aware;
- (b) Identify each person with such knowledge or awareness; and
- (c) State the means by which such person gained such knowledge or awareness.

Answer

Prior to applicant's adoption and use of BlueMan in the United States, Applicant was not aware of the name Blue Man Group for any product or service.

Interrogatory No. 8

Identify each type of specimen submitted in support of Application No. 76/295,724 and, for each type of specimen identified:

- (a) Identify each person responsible for creating the specimen; and
- (b) State when the specimen was created.

Answer

In addition to the general objections, applicant objects to the interrogatory as calling for information equally available to opposer through public records of the United States Patent and Trademark Office. Along with his application, applicant submitted packaging specimens for tobacco products, i.e., empty cigarette packages. The initial artwork for the specimens was created in 1997 while package printing for the actual specimens submitted with the present trademark application was created during ongoing manufacturing and packaging of applicant's tobacco products subsequent to March 1997.

Interrogatory No. 9

With respect to Applicant's first use in interstate commerce of the trademark BLUEMAN in connection with products distributed in the United States:

- {a) Describe the circumstances of such first use including, without limitation, the type and quantity of products first distributed by Applicant bearing such mark; and
- {b) Identify the individual, corporation, or other entity to whom or which the products were first sold or transported in interstate commerce.

Answer

- (a) As least as early as Spring 1999, applicant transported from Austria to the United States approximately two cartons of cigarettes bearing the BlueMan trademark for marketing, promotion, and entry of his tobacco products in United States commerce. BlueMan branded tobacco packages were initially distributed to independent U.S. representative and sales personnel in Maryland for delivery to Landmark Corporation in Las Vegas, Nevada and elsewhere, which became applicant's initial U.S. distributor.
- (b) Landmark Corporation, Las Vegas, Nevada

Interrogatory No. 10

Identify each trademark or service mark used by Applicant that includes the term BLUE or MAN, whether alone or in combination with other terms or devices, and, for each trademark or service mark so identified, specify the product or service for which the mark is used.

Answer

Applicant has only used the mark BlueMan for tobacco products, as indicated by the specimens filed with applicant's trademark application.

Interrogatory No. 11

Specify each type of product that presently is or in the past was distributed by Applicant (and/or persons authorized by Applicant) in the United States under the trademark BLUEMAN, whether alone or in combination with other terms or devices.

Answer

Tobacco products, namely cigarettes.

Interrogatory No. 12

For each type of product specified in response to Interrogatory No. 11:

- (a) Specify the method and geographic extent of distribution of the product;
- (b) specify the channels of trade through which the product is normally distributed from Applicant to ultimate purchaser;
- (c) Specify the types of individuals, corporations, or other entities that normally purchase the product;
- (d) Specify the time periods during which the product was manufactured or sold any periods of non-use, including reasons therefor; and
- (e) Specify each manner (e.g., labels, hangtags, packaging, package inserts, advertising, etc.) in which Applicant's mark is used in connection with the product.

Answer

Applicant objects to the interrogatory as calling for information within the knowledge of third parties. Subject to the foregoing and the general objections, applicant responds as follows:

(a) Applicant himself does not market, sell, or retail tobacco products in the United States, but instead, ships to independent distributors or representatives in the United States and elsewhere. Upon information and belief, the independent U.S. distributors and representatives, in turn, define the method, geographic extent, and channel of distribution to the ultimate purchaser.

(b) Same response as provided in paragraph (a).

(c) Upon information and belief, individual consumers normally purchase applicant's products in the United States.

(d) Applicant has manufactured, marketed, promoted, sold and/or offered to sell tobacco products bearing the BlueMan mark continuously since 1997 without any period of nonuse. Upon information and belief, applicant's U.S. distributors and representatives have continuously marketed, promoted, sold and/or offered for sale BlueMan brand cigarettes collectively since 1997 without any period of nonuse.

(e) As previously provided herein, applicant has used the BlueMan mark on cigarette packaging in the same way revealed by specimens filed with applicant's U.S. trademark application.

Interrogatory No. 13

For each type of product specified in response to Interrogatory No. 11:

(a) Specify the approximate annual volume of sales of the products in both units and dollars for the years 2000, 2001, 2002 and 2003 (or any parts thereof);

(b) Specify any other monies that Applicant has received in connection with the product for the years 2000, 2001, 2002 and 2003 (or any parts thereof) including, without limitation, any licensing revenues.

Response

In addition to the general objections, applicant objects to Interrogatory No. 13 as calling for information beyond the scope of permissible discovery and having no relevance to any issue involving registration of applicant's BlueMan mark before the United States Patent and Trademark Office.

Interrogatory No. 14

Identify all persons or entities to which Applicant has licensed or otherwise authorized the right to use the trademark BLUEMAN whether alone or in combination with other terms or devices, and, for each such person or entity identified, state the applicable time period of such license or other authorization.

Answer and Response

Subject to the general objections, applicant relies on information contained in documents produced during discovery. In further reply, applicant identifies Landmark Corporation of Las Vegas, Nevada with which applicant contracted to distribute and sell BlueMan tobacco products in the United States. Details of the contractual relationship are contained in documents previously produced by applicant.

Interrogatory No. 15

For each person or entity identified in response to Interrogatory No. 14, describe the method or means by which Applicant controls the quality of the products in connection with which the person or entity uses the trademark BLUEMAN, whether alone or in combination with other items or devices.

Answer

Subject to the general objections and without waiver, applicant supplies cigarettes to independent U.S. representative and distributors who, in turn, sell applicant-supplied products to other distributors or retailers. Upon information and belief, no alterations of the products are made prior to end-use consumption. Thus, no quality control is deemed necessary.

Interrogatory No. 16

With respect to any advertising or promotional activities in the United States in connection with products bearing Applicant's trademark BLUEMAN, whether alone or in combination with other terms or devices:

- (a) State whether any such advertising has been carried out by Applicant or another, and, if by another, identify that person or entity;
- (b) Describe the type of media or means of advertising or promotion employed; and
- (c) Specify the approximate annual amount expended by Applicant or others on advertising in the years 2000, 2001, 2002 and 2003 (or any parts thereof).

Answer and Response

In addition to the general objections, applicant objects to Interrogatory No. 16 as calling for information beyond the control of applicant. Without waiver, applicant has carried out no advertising in the United States other than sales calls for marketing and promoting BlueMan branded cigarettes in the United States beginning in Spring 1999.

Interrogatory No. 17

Identify Applicant's (and/or Applicant's business partner's, affiliate's, related company's, or licensee's) product director or sales manager with responsibility for the sale and/or advertising and promotion of products bearing Applicant's trademark BLUEMAN in the United States.

Answer and Response

Applicant is currently unaware of the identity of any product or sales manager of its independent U.S. distributors, agents, or representatives.

Interrogatory No. 18

Identify all claims, conflicts, trademark opposition proceedings, and civil litigations Applicant has been involved in relating to Applicant's trademark or service mark BLUEMAN, whether alone or in combination with other terms or devices, apart from the present opposition and, for each matter identified:

- (a) state its date of commencement and termination;
- (b) State the trademark and goods of the other party or parties involved; and
- (c) State its current status and/or final outcome.

Answer

Applicant's mark BlueMan has not been subject to any claim, conflict, opposition, or litigation in the United States.

Interrogatory No. 19

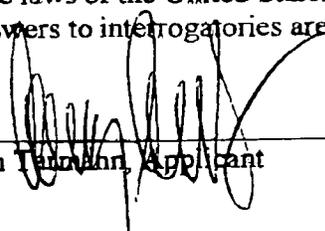
With respect to any instances of confusion that may have resulted from Applicant's use of its trademark BLUEMAN, whether alone or in combination with other terms or devices;

- (a) Specify any instances of confusion of which Applicant is aware; and
- (b) Identify each person having knowledge of such instances of confusion.

Answer

- (a) None
- (b) Not applicable.

I declare under penalty of perjury under the laws of the United States of America that the information contained in the foregoing answers to interrogatories are true and correct.



Erich Teitzmann, Applicant

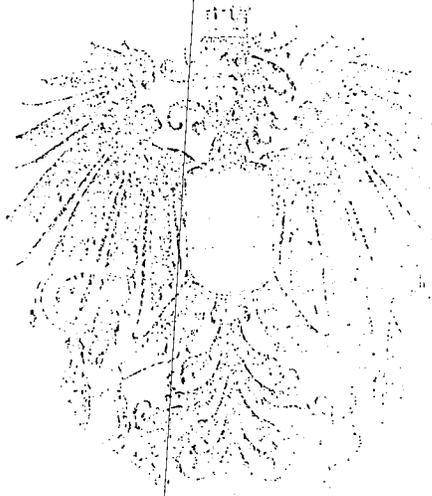
Respectfully submitted,



11/4/2003
 Lawrence Harbin, D.C. Bar # 236190
 Amy M. Jones-Baskaran, D.C. Bar # 417293
 McIntyre Harbin & King LLP
 500 Ninth Street, S.E.
 Washington, D.C. 20003
 Tel. 202-546-1100 Fax 202-543-9230

Exhibit 5

REPUBLIK ÖSTERREICH



REGISTRIERUNGS- BESTÄTIGUNG

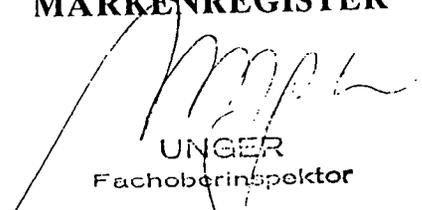
DIE UMSEITIGE MARKE IST
GEMÄSS DEM MARKENSCHUTZGESETZ
REGISTRIERT WORDEN.

DIE SCHUTZDAUER DER MARKE BETRÄGT ZEHN JAHRE.
SIE KANN DURCH RECHTZEITIGE ERNEUERUNG DER REGI-
STRIERUNG IMMER WIEDER UM ZEHN JAHRE VERLÄNGERT
WERDEN.



WIEN, AM - 2. Okt. 1997

ÖSTERREICHISCHES PATENTAMT
MARKENREGISTER


UNGER
Fachoberinspektor

Aktenzeichen: AM 2393/97	Register.Nr.: 171 796
Tag der Anmeldung: 1997 05 02	Priorität:
Beginn der Schutzdauer: 1997 10 01	
Erloschen am:	
Markeninhaber: TARMANN ERICH (W) A - 1190 WIEN, WALLMODENGASSE 11	
Vertreter: (R) NEMETZ HANS DR., NEMETZ HANS CHRISTIAN DR., A - 1030 WIEN, UCHATIUSGASSE 4	
Marke - Waren bzw. Dienstleistungen: <div style="text-align: center;">  <p>BlueMan AMERICAN BLEND</p> </div> <p>Kl.25: Bekleidungsstücke, Schuhwaren, Kopfbedeckungen; Kl.32: Biere; Mineralwässer und kohlensäurehaltige Wässer; alkoholfreie Getränke; Fruchtgetränke und Fruchtsäfte; Sirupe für Getränke; Kl.34: Tabak; Raucherartikel; Streichhölzer.</p>	



120 120

80.- S Kanzleigebühr
bezahlt

Exhibit 6



ORGANISATION MONDIALE DE LA PROPRIÉTÉ INTELLECTUELLE

34, chemin des Colombettes, case postale 18, CH-1211 Genève 20 (Suisse)
☎ (022) 338 91 11 - ☒ 412 912 ompi ch - Adresse télégraphique: OMPI
Télécopieur (Service d'enregistrement international des marques): (41-22) 740 14 29

ARRANGEMENT ET PROTOCOLE DE MADRID

CERTIFICAT D'ENREGISTREMENT

Le Bureau international de l'Organisation Mondiale de la Propriété Intellectuelle (OMPI) certifie que les indications figurant au verso sont conformes aux inscriptions faites au registre international des marques en vertu de l'Arrangement de Madrid ou du Protocole relatif à cet Arrangement ou de ces deux instruments.

Genève, le 4 DEC. 1997

Bureau international de
l'Organisation Mondiale de la Propriété Intellectuelle (OMPI)

Salvatore Di Palma
Chef
Section de l'Administration
Département des enregistrements internationaux



1 octobre 1997

682 457

Erich Tarmann
11, Wallmodenstrasse,
A-1190 Wien
(Autriche).

Nom et adresse du mandataire: Dr. Hans Nemetz Dr. Hans
Christian Nemetz Rechtsanwälte, 4, Uchatiusgasse, A-1030
Wien (Autriche).



BlueMan
AMERICAN BLEND

Classification des éléments figuratifs:
2.1; 19.3; 25.1; 26.4; 29.1.

Couleurs revendiquées: Bleu, noir, blanc.

Liste des produits et services:

- 25 Vêtements, chaussures, chapellerie.
- 32 Bières; eaux minérales et gazeuses et autres boissons non alcooliques; boissons aux fruits et jus de fruits; sirops et autres préparations pour faire des boissons.
- 34 Tabac; articles pour fumeurs; allumettes.

Enregistrement de base: Autriche, 01.10.1997, 171 796.

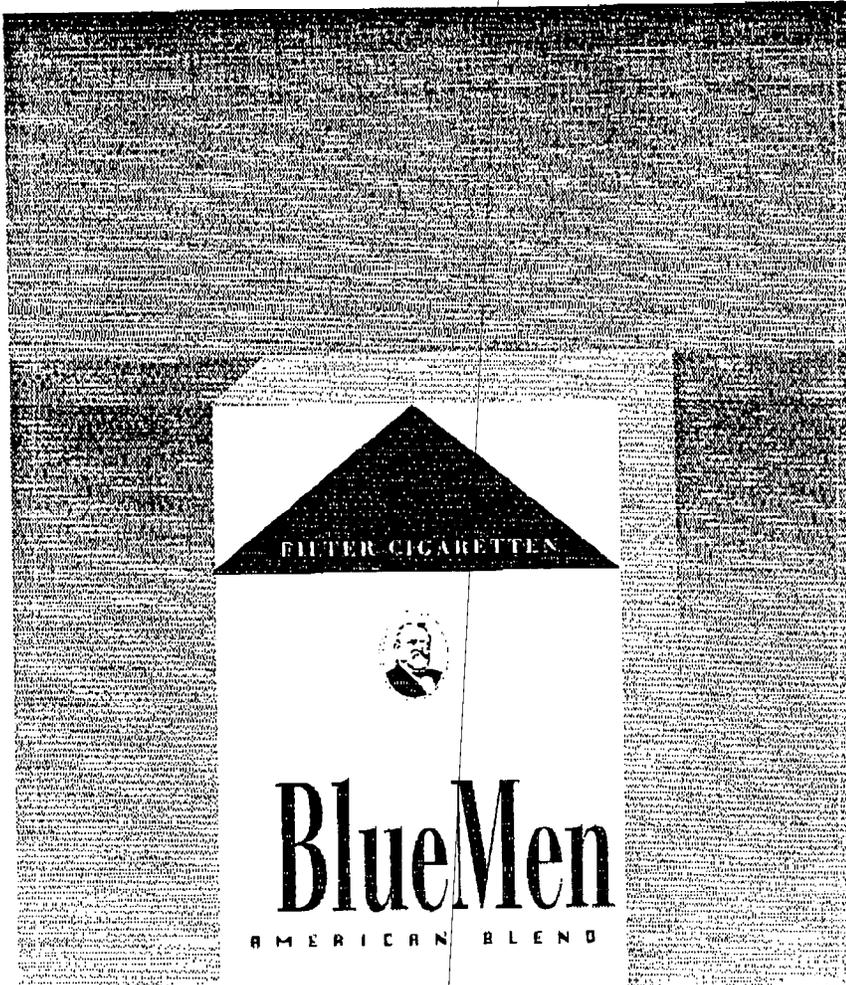
Données relatives à la priorité selon la Convention de Paris:
Autriche, 02.05.1997, AM 2393/97.

Désignations selon l'Arrangement de Madrid: Albanie, Algérie, Allemagne, Arménie, Azerbaïdjan, Benelux, Bosnie-Herzégovine, Bulgarie, Chine, Croatie, Égypte, Espagne, Ex-République yougoslave de Macédoine, Fédération de Russie, France, Hongrie, Italie, Kazakhstan, Kirghizistan, Lettonie, Liechtenstein, Maroc, Mongolie, Ouzbékistan, Pologne, Portugal, République de Moldova, République populaire démocratique de Corée, République tchèque, Roumanie, Slovaquie, Slovénie, Soudan, Suisse, Tadjikistan, Ukraine, Viet Nam, Yougoslavie.

Date de notification: 04.12.1997

Langue de la demande internationale: Français

Exhibit 7



PERICAD-Bayonne, N. J.
**APPLICANT'S
 EXHIBIT**
7

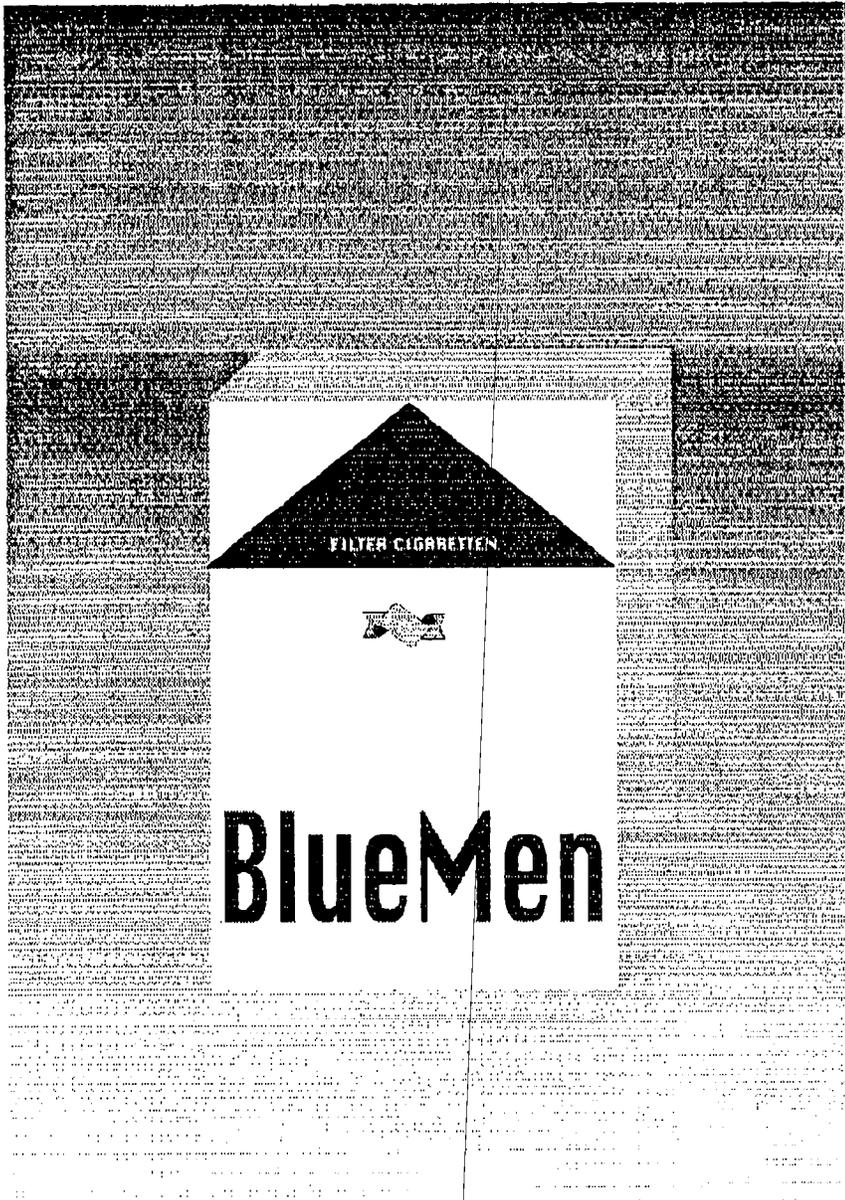


BlueMen



FILTER CIGARETTEN

BlueMen



FILTER CIGARETTEN



BlueMen