

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Baez

Mailed: April 1, 2004

Opposition No. 91154055

Blue Man Productions, Inc.

v.

Erich Tarmann

Cindy B. Greenbaum, Attorney:

This case now comes up on applicant's motion to strike opposer's second notice of reliance, and applicant's combined motion to dismiss for failure to prosecute, for judgment on the pleadings, or alternatively, for summary judgment, both filed on February 23, 2003.¹

Notwithstanding a reference in footnote 2 of the motion to strike to a possible timeliness issue regarding opposer's second notice of reliance, said motion is based entirely on substantive grounds. Accordingly, determination of the motion to strike is deferred until final hearing. See M-Tek Inc. v. CVP Systems Inc. 17 USPQ2d 1070 (TTAB

¹ It appears that the Board is missing a second consented motion to extend discovery and trial dates. According to current Board records, opposer's initial testimony period closed November 23, 2003. However, applicant's motion to dismiss, etc., states that the parties stipulated to extend that period to January 22, 2004. The party that filed the missing motion has until THIRTY DAYS from the mailing date of this order to file with the Board a copy of the missing motion, including proof that the Office received the original filing.

1990)(questions of admissibility of documents based on hearsay and lack of authentication deferred).

Inasmuch as the motion to dismiss is based on the presumption that the Board has stricken the second notice of reliance, and the Board has not yet done so, the motion to dismiss is denied as premature. Further, to the extent the motion seeks judgment on the pleadings or summary judgment, the motion is denied as untimely filed. Trademark Rule 2.127(e)(1). See also authorities cited in TBMP 504.01 and 528.02.

Remaining testimony periods are reset as follows:

DISCOVERY PERIOD TO CLOSE: **CLOSED**

Thirty-day testimony period for party in position of plaintiff to close: **CLOSED**

Thirty-day testimony period for party in position of defendant to close: **June 1, 2004**

Fifteen-day rebuttal testimony period to close: **July 16, 2004**

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.