ESTTA Tracking number: **ESTTA51752**

Filing date: **11/03/2005**

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

Proceeding	91154055
Party	Plaintiff Blue Man Productions, Inc. Blue Man Productions, Inc. 434 Lafayette Street New York, NY 10003
Correspondence Address	ANTONIO BORRELLI COWAN, LIEBOWITZ & LATMAN, P.C. 1133 AVENUE OF THE AMERICAS NEW YORK, NY 10036-6799
Submission	Notice of Filing Civil Action with Certificate of Service
Filer's Name	Antonio Borrelli
Filer's e-mail	axb@cll.com, trademark@cll.com
Signature	/Antonio Borrelli/
Date	11/03/2005
Attachments	blue.pdf (28 pages)

Ref. No. 21749.003

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

In re: Application Serial Nos. 76/295,724
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. 91 154,055

Commissioner for Trademarks
Attention: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, Virginia 22313-1451

NOTICE OF FILING CIVIL ACTION

Pursuant to Rule 2.145(c)(4) of the Trademark Rules of Practice, Opposer, Blue Man Productions, Inc., by and through counsel, hereby gives notice that Opposer commenced a civil action pursuant to Section 21(b) of the Lanham Act by filing the complaint attached as Exhibit A hereto in the United States District Court for the District of Columbia. Accordingly, Opposer respectfully requests that the above-captioned proceeding not be prematurely terminated.

Dated: New York, New York
November 3, 2005

Respectfully submitted,
COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer

By: Antonio Borrelli

Robert W. Clarida
Antonio Borrelli
1133 Avenue of the Americas
New York, New York 10036
(212) 790-9200

EXHIBIT A

UNITED STATES DISTRICT COURT
District of Columbia

BLUE MAN PRODUCTIONS, INC.,

Plaintiff,

V.

ERICH TARMANN,

Defendant.

SUMMONS IN A CIVIL CASE

CASE NUMBER 1:05CV02037

JUDGE: John D. Bates

DECK TYPE: General Civil

DATE STAMP: 10/17/2005

CASE NUMBI

TO: (Name and address of Defendant)

Erich Tarmann
Wallmodengasse 11
Vienna 1190
Austria

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Jonathan Hudis
Kathleen Cooney-Porter
Oblon, Spivak, McClelland,
Maier & Neustadt, P.C.
1940 Duke Street
Alexandria, VA 22314 U.S.A.

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

NANCY M. MAYER-WHITTINGTON
CLERK

OCT 17 2005
DATE

(By) DEPUTY CLERK

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Nancy M. Mayer-Whittington
Clerk of Court

NOTICE OF RIGHT TO CONSENT TO TRIAL BEFORE A UNITED STATES MAGISTRATE JUDGE

The substantial criminal caseload in this Court and the requirements of the criminal Speedy Trial Act frequently result in the delay in the trial of civil cases. Aware of the hardship and expense to the parties, counsel, and witnesses caused by the delays which are beyond the control of the Court, this notice is to advise you of your right to trial of your case by a United States Magistrate Judge. By statute, 28 USC § 636(c), Fed.R.Civ.P. 73 and Local Civil Rule 73.1, the parties, by consent, can try their case by means of a jury trial or bench trial before a United States Magistrate Judge. Appeals from judgments and final orders are taken directly to the United States Court of Appeals for the District of Columbia Circuit, in the same manner as an appeal from a judgment of a District Judge in a civil case.

WHAT IS THE PROCEDURE?

One of the matters you are required to discuss at the meet-and-confer conference mandated by Local Civil Rule 16.3 is whether the case should be assigned to a United States Magistrate Judge for all purposes, including trial

All parties must consent before the case is assigned to a Magistrate Judge for trial. You may consent at any time prior to trial. If you expressly decline to consent or simply fail to consent early in the case, you are not foreclosed from consenting later in the case. However, a prompt election to proceed before a Magistrate Judge is encouraged because it will facilitate a more orderly scheduling of the case.

Counsel for the plaintiff has been furnished a copy of the "Consent to Proceed Before a United States Magistrate Judge for all Purposes" form. If and when the form is executed, your response should be made to the Clerk of the United States District Court only.

WHAT IS THE ADVANTAGE?

The case will be resolved sooner and less expensively. The earlier the parties consent to assigning the case to a Magistrate Judge the earlier a firm and certain trial date can be established, even if the case is to be tried to a jury.

Upon the filing of the consent form and with the approval of the District Judge, the case will be assigned to all purposes to a Magistrate Judge.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BLUE MAN PRODUCTIONS, INC., 434 Lafayette Street New York, New York 10003 (A New York Corporation), Plaintiff, v. ERICH TARMANN, Wallmodengasse 11 Vienna 1190 Austria (An Austrian Resident) Defendant.	)	CASE NUMBER 1:05CV02037 JUDGE: John D. Bates Civi DECK TYPE: General Civil DATE STAMP: 10/17/2005 **COMPLAINT**

Plaintiff, Blue Man Productions, Inc., as and for its Complaint against defendant, Erich Tarmann, alleges as follows:

INTRODUCTION

1. By this action, Plaintiff seeks review and reversal of the August 18, 2005 decision of the Trademark Trial and Appeal Board ("TTAB") of the United States Patent and Trademark Office, to the extent it was adverse to plaintiff, in Opposition No. 91/154,055 (the "Opposition"):

   a. finding that Plaintiff's mark BLUE MAN GROUP is not a famous mark;

   b. dismissing the Opposition on the ground of likelihood of confusion; and

   c. dismissing the Opposition on the ground of dilution.

JURISDICTION AND VENUE

2. This is a civil action for a *de novo* review of the final decision of the Trademark Trial and Appeal Board ("TTAB") of the United States Patent and Trademark Office ("USPTO") in Opposition No. 91/154,055. This case arises under the Lanham Act, 15 U.S.C. §§ 1051, *et seq.* The Court has subject matter jurisdiction over this matter pursuant to 15 U.S.C. §1071(b),

because this is a civil action to appeal a decision of the TTAB that resulted in a final disposition of the Opposition.

3. This Court has personal jurisdiction over defendant pursuant to 15 U.S.C. § 1071(b)(4) because defendant resides in a foreign country and because defendant has purposefully availed himself of the privileges and benefits of doing business in the District of Columbia.

4. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (d), and pursuant to 15 U.S.C. § 1071(b)(4).

BACKGROUND

5. Plaintiff, a New York corporation having a place of business at 434 Lafayette Street, New York, New York 10003, is the owner of the renowned mark BLUE MAN GROUP in the United States.

6. Upon information and belief, Defendant is an individual residing in Austria, with an address of Wallmodengasse 11, Vienna 1190, Austria.

7. Commencing long prior to March 6, 2000, Defendant's claimed first use date, Plaintiff has used the BLUE MAN GROUP mark in connection with a wide variety of goods and services including entertainment services in the nature of live musical and theatrical performances, magnets, postcards, posters, pens, hats, caps, t-shirts, sweatshirts, jackets, mugs, watches, clocks, mouse pads, key chains, pins, musical sound recordings and prerecorded videos throughout the United States.

8. Plaintiff is the owner of the following federal registrations, copies of which are attached:

Mark	Reg. No.	Reg. Date	Goods/Services
BLUE MAN GROUP	2,450,660	5/15/01	Entertainment services in the nature of live musical and theatrical performances in International Class 41
BLUE MAN GROUP	2,438,222	3/27/01	Gift items, namely, decorative magnets in International Class 9; paper goods, namely, postcards and posters in International Class 16; apparel, namely, hats, t-shirts, sweatshirts in International Class 25
BLUE MAN GROUP	2,617,550	9/10/02	Musical sound recordings in International Class 9
BLUE MAN GROUP	2,677,610	1/21/03	Mugs in International Class 21
BLUE MAN GROUP	2,680,625	1/28/03	Watches; ornamental pins in International Class 14
BLUE MAN GROUP	2,677,611	1/21/03	Clothing, namely, jackets and caps in International Class 25
BLUE MAN GROUP	2,741,259	7/29/03	Prerecorded video cassettes and discs featuring musical and theatrical performances in International Class 9

Additionally, Plaintiff owns a pending application for the BLUE MAN GROUP mark, namely, Application Serial No. 78/311,760 for goods in International Classes 6, 9, 14, 16, 20, 25 and 28.

9. Commencing long prior to March 6, 2000, Defendant's claimed first use date, Plaintiff has extensively promoted and advertised the sale of goods and services using its BLUE MAN GROUP mark, and has sold such goods and rendered such services in commerce in the United States.

10. As a result of the extensive sales and promotion of its goods and services using its BLUE MAN GROUP mark, Plaintiff has built up highly valuable goodwill for its BLUE MAN GROUP mark, and has built a reputation for excellence and high quality. Plaintiff's advertising and promotional efforts have brought the BLUE MAN GROUP mark high recognition and visibility among consumers.

11. The BLUE MAN GROUP mark has been widely used by Plaintiff, by which the press and the public to identify Plaintiff and its products and services. Widespread recognition of the BLUE MAN GROUP mark has thereby been achieved. Based on this use and widespread fame, the BLUE MAN GROUP mark has become closely and uniquely identified and associated with Plaintiff.

12. On August 6, 2001, Defendant filed an application, claiming a first use date of March 6, 2000, to register on the Principal Register the word mark BLUEMAN for "tobacco, smokers' articles, namely cigarettes" in International Class 34 as shown in Application Serial No. 76/295,724 (the "Application").

13. Upon information and belief, defendant was aware of the BLUE MAN GROUP mark and selected BLUEMAN as a mark in order to exploit the national goodwill of the BLUE MAN GROUP mark.

14. The goods covered by the Application are closely related to Plaintiff's goods and services associated with its BLUE MAN GROUP mark.

15. Defendant's BLUEMAN mark so resembles Plaintiff's BLUE MAN GROUP mark, so as to be likely, when applied to Defendant's goods, to cause confusion, to cause mistake, and to deceive because the public is likely to believe that Defendant's goods have their origin with Plaintiff and/or that such goods are approved, endorsed or sponsored by Plaintiff or associated in some way with Plaintiff. Plaintiff would thereby be injured by the granting to Defendant a certificate of registration for the BLUEMAN mark.

16. On December 3, 2002, Plaintiff filed a Notice of Opposition against the Application with the TTAB on the ground that, long prior to Defendant's claimed date of first use, Plaintiff adopted and used the mark BLUE MAN GROUP in connection with its goods and services.

17. Plaintiff's Notice of Opposition claimed that Plaintiff would be injured by the granting of a registration to Defendant for the mark BLUEMAN because the registration may tend to damage Plaintiff's valuable goodwill and reputation for excellence and high quality in the BLUE MAN GROUP mark.

18. The Notice of Opposition also claimed that Plaintiff would be further injured by the granting of a certificate of registration to Defendant because Defendant's mark is nearly identical to Plaintiff's BLUE MAN GROUP mark, and Defendant's BLUEMAN mark would falsely suggest a connection between Defendant's mark and Plaintiff.

19. The Notice of Opposition also claimed that the BLUE MAN GROUP mark is both famous and distinctive, and was so prior to March 6, 2000, Defendant's claimed first use date. Due to the national repute of the BLUE MAN GROUP mark, Defendant's BLUEMAN mark will dilute the distinctive quality of Plaintiff's BLUE MAN GROUP mark.

20. On or about August 18, 2005, the TTAB rendered its decision dismissing the Opposition on the ground of likelihood of confusion, finding that Plaintiff's BLUE MAN GROUP mark is not likely to be confused with Defendant's BLUEMAN mark, and dismissing the Opposition on the ground of dilution, finding that Defendant's BLUEMAN mark would not dilute the distinctive quality of Plaintiff's BLUE MAN GROUP mark. The decision of the TTAB is unsupported by substantial evidence in accordance with 5 U.S.C. §706(2)(E) and, in rendering its decision, the TTAB improperly excluded relevant evidence submitted by Plaintiff and improperly weighed the evidence it did accept.

21. The TTAB's decision (i) was arbitrary, capricious, and an abuse of discretion by improperly considering Plaintiff's evidence in support of the fame of its BLUE MAN GROUP MARK; (ii) erroneously dismissed the Opposition on the ground of likelihood of confusion by failing to properly consider the similarities between the parties' marks and the relatedness of the

parties' respective goods and services; and (iii) erroneously dismissed the Opposition on the ground of dilution by failing to properly consider the effect of Defendant's BLUEMAN mark upon the distinctive quality of Plaintiff's famous BLUE MAN GROUP mark.

CAUSE OF ACTION: APPEAL OF TTAB DECISION

22. Plaintiff repeats, and incorporates by reference, the allegations of paragraphs 1 through 21 above.

23. Pursuant to 15 U.S.C. § 1071(b), this Court may review a final disposition of the TTAB in connection with a trademark opposition.

24. The Court's review of the TTAB's August 18, 2005 decision in Opposition No. 91/154,055 will determine whether: (i) the TTAB's actions were arbitrary, capricious and an abuse of discretion; (ii) the TTAB's factual findings on the fame of Plaintiff's BLUE MAN GROUP mark were based on substantial evidence; (iii) additional evidence to be presented before this Court for *de novo* consideration constitutes grounds for reversal; and (iv) whether the TTAB's legal conclusions were based upon a correct application of applicable law.

25. The TTAB's actions were arbitrary, capricious and an abuse of discretion in failing to properly weigh Plaintiff's evidence.

26. The TTAB's decision was not based on substantial evidence.

27. In toto, the TTAB's findings of fact were not supported by substantial evidence and further, the TTAB's conclusions of law were clearly erroneous.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against defendant as follows:

1. That the decision of the TTAB dismissing Opposition No. 91/154,055 should be reversed, to the extent that it was adverse to plaintiff;

2. That Application Ser. No. 76/295,724 for the mark BLUEMAN should be denied registration;

3. That Defendant pay to Plaintiff the costs of this action, including such attorneys' fees as are deemed reasonable by the Court; and

4. For such other and further relief as the Court may deem just and proper.

Respectfully sumbmitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.

Dated: October 17, 2005

By: _____

Jonathan Hudis
(D.C. Bar No. 418872)
Kathleen Cooney-Porter
(D.C. Bar No. 434526)
1940 Duke Street
Alexandria, Virginia 22314
(703) 413-3000
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Attorneys for Plaintiff
BLUE MAN PRODUCTIONS, INC.

Of Counsel:

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Int. Cl.: 41

Prior U.S. Cls.: 100, 101 and 107

Reg. No. 2,450,660

United States Patent and Trademark Office

Registered May 15, 2001

SERVICE MARK
PRINCIPAL REGISTER

BLUE MAN GROUP

BLUE MAN PRODUCTIONS, INC. (NEW YORK CORPORATION)
434 LAFAYETTE STREET
NEW YORK, NY 10003

FOR: ENTERTAINMENT SERVICES IN THE NATURE OF LIVE MUSICAL AND THEATRICAL PERFORMANCES, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 0-0-1988; IN COMMERCE 0-0-1988.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "GROUP", APART FROM THE MARK AS SHOWN.

SER. NO. 75-821,055, FILED 10-12-1999.

MONIQUE MILLER, EXAMINING ATTORNEY

Int. Cls.: 9, 16 and 25

Prior U.S. Cls.: 2, 5, 21, 22, 23, 26, 29, 36, 37, 38, 39 and 50

Reg. No. 2,438,222

United States Patent and Trademark Office

Registered Mar. 27, 2001

TRADEMARK
PRINCIPAL REGISTER

BLUE MAN GROUP

BLUE MAN PRODUCTIONS, INC. (NEW YORK CORPORATION)
434 LAFAYETTE STREET
NEW YORK, NY 10003

FOR: GIFT ITEMS, NAMELY, DECORATIVE MAGNETS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 0-0-1991; IN COMMERCE 0-0-1991.

FOR: PAPER GOODS, NAMELY, POSTCARDS AND POSTERS, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 0-0-1991; IN COMMERCE 0-0-1991.

FOR: APPAREL, NAMELY HATS, T-SHIRTS, SWEATSHIRTS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 0-0-1991; IN COMMERCE 0-0-1991.

SER. NO. 75-821,074, FILED 10-12-1999.

MONIQUE MILLER, EXAMINING ATTORNEY

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

Reg. No. 2,617,550

United States Patent and Trademark Office

Registered Sep. 10, 2002

TRADEMARK
PRINCIPAL REGISTER

BLUE MAN GROUP

BLUE MAN PRODUCTIONS, INC. (NEW YORK CORPORATION)
434 LAFAYETTE STREET
NEW YORK, NY 10003

FOR: MUSICAL SOUND RECORDINGS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 12-0-1999; IN COMMERCE 12-0-1999.

OWNER OF U.S. REG. NOS. 2,438,222 AND 2,450,660.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "GROUP", APART FROM THE MARK AS SHOWN.

SER. NO. 76-257,345, FILED 5-15-2001.

BILL DAWE, EXAMINING ATTORNEY

Int. Cl.: 21

Prior U.S. Cls.: 2, 13, 23, 29, 30, 33, 40 and 50

United States Patent and Trademark Office

Reg. No. 2,677,610

Registered Jan. 21, 2003

TRADEMARK
PRINCIPAL REGISTER

BLUE MAN GROUP

BLUE MAN PRODUCTIONS, INC. (NEW YORK CORPORATION)
434 LAFAYETTE STREET
NEW YORK, NY 10003

FOR: MUGS, IN CLASS 21 (U.S. CLS. 2, 13, 23, 29, 30, 33, 40 AND 50).

FIRST USE 10-31-2001; IN COMMERCE 10-31-2001.

OWNER OF U.S. REG. NOS. 2,438,222 AND 2,450,660.

SER. NO. 76-385,635, FILED 3-21-2002.

BILL DAWE, EXAMINING ATTORNEY

Int. Cl.: 14

Prior U.S. Cls.: 2, 27, 28 and 50

United States Patent and Trademark Office

Reg. No. 2,680,625

Registered Jan. 28, 2003

TRADEMARK
PRINCIPAL REGISTER

BLUE MAN GROUP

BLUE MAN PRODUCTIONS, INC. (NEW YORK CORPORATION)
434 LAFAYETTE STREET
NEW YORK, NY 10003

FOR: WATCHES; ORNAMENTAL PINS, IN CLASS 14 (U.S. CLS. 2, 27, 28 AND 50).

FIRST USE 10-25-2000; IN COMMERCE 10-25-2000.

OWNER OF U.S. REG. NOS. 2,438,222 AND 2,450,660.

SER. NO. 76-385,636, FILED 3-21-2002.

BILL DAWE, EXAMINING ATTORNEY

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

Reg. No. 2,677,611

United States Patent and Trademark Office

Registered Jan. 21, 2003

TRADEMARK
PRINCIPAL REGISTER

BLUE MAN GROUP

BLUE MAN PRODUCTIONS, INC. (NEW YORK CORPORATION)
434 LAFAYETTE STREET
NEW YORK, NY 10003

FOR: CLOTHING, NAMELY, JACKETS, CAPS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 10-1-2001; IN COMMERCE 10-1-2001.

OWNER OF U.S. REG. NOS. 2,438,222 AND 2,450,660.

SER. NO. 76-385,637, FILED 3-21-2002.

BILL DAWE, EXAMINING ATTORNEY

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

Reg. No. 2,741,259

United States Patent and Trademark Office

Registered July 29, 2003

TRADEMARK
PRINCIPAL REGISTER

BLUE MAN GROUP

BLUE MAN PRODUCTIONS, INC. (NEW YORK CORPORATION)
434 LAFAYETTE STREET
NEW YORK, NY 10003

FOR: PRE-RECORDED VIDEO CASSETTES AND DISCS FEATURING MUSICAL AND THEATRICAL PERFORMANCES, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 2-13-2001; IN COMMERCE 2-13-2001.

OWNER OF U.S. REG. NOS. 2,438,222 AND 2,450,660.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "GROUP", APART FROM THE MARK AS SHOWN.

SER. NO. 76-385,638, FILED 3-21-2002.

BILL DAWE, EXAMINING ATTORNEY

CO-386-online
10/03

United States District Court
For the District of Columbia

BLUE MAN PRODUCTIONS, INC., Plaintiff

vs

ERICH TARMANN, Defendant

Civil Action 1

CASE NUMBER 1:05CV02037

JUDGE: John D. Bates

DECK TYPE: General Civil

DATE STAMP: 10/17/2005

CERTIFICATE RULE LCvR 7.1

I, the undersigned, counsel of record for Plaintiff certify that to the best of my knowledge and belief, the following are parent companies, subsidiaries or affiliates of Plaintiff which have any outstanding securities in the hands of the public:

NONE

These representations are made in order that judges of this court may determine the need for recusal.

Attorney of Record

Jonathan Hudis
Signature

418872
BAR IDENTIFICATION NO.

Jonathan Hudis
Print Name

Oblon, Spivak ET AL. 1940 Duke Street
Address

Alexandria, VA 22314
City State Zip Code

703-413-3000
Phone Number

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

INITIAL ELECTRONIC CASE FILING ORDER

Subsequent filings in this case must be made electronically using the Court's Electronic Case Filing System (ECF) pursuant to Local Rule 5.4.

ORDERED that counsel shall:

- Submit in paper, the original and copy of the complaint/notice of removal/petitions for habeas corpus and any accompanying papers. Additionally, litigants are hereby required to provide those filings in PDF Format on a floppy disk or CD-Rom compact disk. The disk should be clearly labeled with the case number (if known) and the name of the parties. If unable to deliver the filing on a disk at the time of the new case filing, counsel should e-mail the initiating document and accompanying papers to dcd_cmecf@dcd.uscourts.gov by the close of business the day the new case was filed. Failure to supply electronic copies of the new case in a timely manner, will result in the attorney's name being added to the attorney non-compliant list and shared with the Court's ECF Judge's Committee. Regardless of what option, counsel chooses the complaint/notice of removal and accompanying papers must come to the Court as PDF documents. Each exhibit to the new case shall be in a separate PDF file. Failure to submit PDF versions of the complaint/notice of removal and other documents will delay the opening of the case in ECF.

- Register, if not previously registered, to become an electronic filer by completing and returning the enclosed ECF Registration Form found on the Court's Website at (www.dcd.uscourts.gov). The login and password are case specific and can be used for all cases.

- All subsequent filings must be made electronically.

- Have a PACER (Public Access to Court Electronic Records) account, in order to view dockets and documents. Call 1-800-676-6856 or visit www.pacer.psc.uscourts.gov for additional information.

- Schedule a training class at the Courthouse by going to the Court's ECF Internet Website (www.dcd.uscourts.gov/ecf.html). Also, filing instructions and an interactive tutorial can be found at this Internet Website.

BATES, J.JDB

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC CASE FILES
Attorney/Participant Registration Form

LIVE SYSTEM

This form shall be used to register for an account on the Court's Electronic Case Files (ECF) system and to subscribe to the ECF EMail (Listserver) notification service. Registered attorneys and other participants will have privileges both to electronically submit documents, and to view and retrieve electronic docket sheets and documents for all cases assigned to the Electronic Case Files system. Listserver subscribers receive email messages whenever the Court wishes to electronically notify ECF registrants of pertinent ECF information.

The following information is required for registration:

First Name/Middle Initial/Last Name _____

Last four digits of Social Security Number _____

DC Bar ID#. _____

Firm Name _____

Firm Address _____

Voice Phone Number _____

FAX Phone Number _____

Internet E-Mail Address _____

By submitting this registration form, the undersigned agrees to abide by the following rules:

1. This system is for use only in cases permitted by the ***U.S. District Court for the District of Columbia.*** It may be used to file and view electronic documents, docket sheets, and notices. Please visit the Court's ECF Internet, www.dcd.uscourts.gov, website to schedule training.

2. Pursuant to Federal Rule of Civil Procedure 11, every pleading, motion, and other paper (except list, schedules, statements or amendments thereto) shall be signed by at least one attorney of record or, if the party is not represented by an attorney, all papers shall be signed by the party. An attorney's/participant's password issued by the court

combined with the user's identification, serves as and constitutes the attorney's/participant's signature. Therefore, an attorney/participant must protect and secure the password issued by the court. If there is any reason to suspect the password has been compromised in any way, it is the duty and responsibility of the attorney/participant to immediately notify the court. This should include the resignation or reassignment of the person with authority to use the password. The Court will immediately delete that password from the electronic filing system and issue a new password.

3. An attorney's/participant's registration will not waive conventional service of a summons and complaint, subpoena, or other judicial process; submit the client to the jurisdiction of the Court; or operate as a consent to accept service of pleadings, documents, and orders in actions in which such attorney/participant has not entered an appearance. An attorney's/participant's registration will constitute a waiver in law only of conventional service of other non-process pleadings, documents, and orders in the case. The attorney/participant agrees to accept, on behalf of the client, service of notice of the electronic filing by hand, facsimile or authorized e-mail.

4. Upon receipt of your login and password, you are strongly encouraged to change your password, which may be done through the Utilities function, to a name easily recalled. **You may be subjected to a fee, should the Clerk's Office have to create a new password for you, or alternatively, you may be required to appear in person to receive your new password.**

5. Attorneys who are active members of the bar of this Court, or government attorneys who are employed or retained by the United States, or who have been permitted to proceed *pro hac vice*, must file pleadings electronically.

Please return this form to:

U.S. District Court for the District of Columbia
Attn: Attorney Admissions
333 Constitution Avenue NW, Room 1825
Washington, DC 20001

Or FAX to:

Peggy Trainum
U.S. District Court for the District of Columbia
(202) 354-3023

Applicant's Signature

Full Last Name | Initial of First Name | Last 4 Digits SS#

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)
Plaintiff(s))
)
v.) Civil Action No. 05 2037 JDB
)
_____)
Defendant(s))

CONSENT TO PROCEED BEFORE
A UNITED STATES MAGISTRATE JUDGE FOR ALL PURPOSES

In accordance with the provisions of 28 U.S.C. § 636(c)(3), the parties to the above-captioned civil matter by and with the advice of their counsel hereby voluntarily waive their rights to proceed before a District Judge of the United States District Court and consent to have a United States Magistrate Judge conduct any and all further proceedings in the case, including trial.

_____ _____
Attorney for the Plaintiff(s) Date

_____ _____
Attorney for the Defendant(s) Date

NOTICE: The foregoing Consent by Counsel shall be accepted upon the understanding that all counsel have secured the consent of their respective clients to the Consent and Referral to a United States Magistrate Judge for all purposes.

ORDER OF REFERENCE

IT IS HEREBY ORDERED that the above-captioned matter be referred to a United States Magistrate Judge for all further proceedings and the entry of judgment in accordance with 28 U.S.C. § 636(c)(3) and the foregoing consent of the parties.

_____ _____
United States District Judge Date

NOTE: RETURN THIS FORM TO THE CLERK OF THE COURT ONLY IF ALL PARTIES HAVE CONSENTED TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE.

CO-942B
Rev 3/95

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ıncy M. Mayer-Whittington
erk of Court

NOTICE OF RIGHT TO CONSENT TO TRIAL BEFORE A UNITED STATES MAGISTRATE JUDGE

The substantial criminal caseload in this Court and the requirements of the criminal Speedy Trial Act frequently result in the delay in the trial of civil cases. Aware of the hardship and expense to the parties, counsel, and witnesses caused by the delays which are beyond the control of the Court, this notice is to advise you of your right to trial of your case by a United States Magistrate Judge. By statute, 28 USC § 636(c), Fed.R.Civ.P. 73 and Local Civil Rule 73.1, the parties, by consent, can try their case by means of a jury trial or bench trial before a United States Magistrate Judge. Appeals from judgments and final orders are taken directly to the United States Court of Appeals for the District of Columbia Circuit, in the same manner as an appeal from a judgment of a District Judge in a civil case.

WHAT IS THE PROCEDURE?

One of the matters you are required to discuss at the meet-and-confer conference mandated by Local Civil Rule 16.3 is whether the case should be assigned to a United States Magistrate Judge for all purposes, including trial

All parties must consent before the case is assigned to a Magistrate Judge for trial. You may consent at any time prior to trial. If you expressly decline to consent or simply fail to consent early in the case, you are not foreclosed from consenting later in the case. However, a prompt election to proceed before a Magistrate Judge is encouraged because it will facilitate a more orderly scheduling of the case.

Counsel for the plaintiff has been furnished a copy of the "Consent to Proceed Before a United States Magistrate Judge for all Purposes" form. If and when the form is executed, your response should be made to the Clerk of the United States District Court only.

WHAT IS THE ADVANTAGE?

The case will be resolved sooner and less expensively. The earlier the parties consent to assigning the case to a Magistrate Judge the earlier a firm and certain trial date can be established, even if the case is to be tried to a jury.

Upon the filing of the consent form and with the approval of the District Judge, the case will be assigned to all purposes to a Magistrate Judge.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

INITIAL ELECTRONIC CASE FILING ORDER

Subsequent filings in this case must be made electronically using the Court's Electronic Case Filing System (ECF) pursuant to Local Rule 5.4.

ORDERED that counsel shall:

- Submit in paper, the original and copy of the complaint/notice of removal/petitions for habeas corpus and any accompanying papers. Additionally, litigants are hereby required to provide those filings in PDF Format on a floppy disk or CD-Rom compact disk. The disk should be clearly labeled with the case number (if known) and the name of the parties. If unable to deliver the filing on a disk at the time of the new case filing, counsel should e-mail the initiating document and accompanying papers to dcd_cmecf@dcd.uscourts.gov by the close of business the day the new case was filed. Failure to supply electronic copies of the new case in a timely manner, will result in the attorney's name being added to the attorney non-compliant list and shared with the Court's ECF Judge's Committee. Regardless of what option, counsel chooses the complaint/notice of removal and accompanying papers must come to the Court as PDF documents. Each exhibit to the new case shall be in a separate PDF file. Failure to submit PDF versions of the complaint/notice of removal and other documents will delay the opening of the case in ECF.

- Register, if not previously registered, to become an electronic filer by completing and returning the enclosed ECF Registration Form found on the Court's Website at (www.dcd.uscourts.gov). The login and password are case specific and can be used for all cases.

- All subsequent filings must be made electronically.

- Have a PACER (Public Access to Court Electronic Records) account, in order to view dockets and documents. Call 1-800-676-6856 or visit www.pacer.psc.uscourts.gov for additional information.

- Schedule a training class at the Courthouse by going to the Court's ECF Internet Website (www.dcd.uscourts.gov/ecf.html). Also, filing instructions and an interactive tutorial can be found at this Internet Website.

BATES, J.JDB

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC CASE FILES
Attorney/Participant Registration Form

LIVE SYSTEM

This form shall be used to register for an account on the Court's Electronic Case Files (ECF) system and to subscribe to the ECF EMail (Listserver) notification service. Registered attorneys and other participants will have privileges both to electronically submit documents, and to view and retrieve electronic docket sheets and documents for all cases assigned to the Electronic Case Files system. Listserver subscribers receive email messages whenever the Court wishes to electronically notify ECF registrants of pertinent ECF information.

The following information is required for registration:

First Name/Middle Initial/Last Name _____

Last four digits of Social Security Number _____

DC Bar ID#. _____

Firm Name _____

Firm Address _____

Voice Phone Number _____

FAX Phone Number _____

Internet E-Mail Address _____

By submitting this registration form, the undersigned agrees to abide by the following rules:

1. This system is for use only in cases permitted by the ***U.S. District Court for the District of Columbia.*** It may be used to file and view electronic documents, docket sheets, and notices. Please visit the Court's ECF Internet, www.dcd.uscourts.gov, website to schedule training.

2. Pursuant to Federal Rule of Civil Procedure 11, every pleading, motion, and other paper (except list, schedules, statements or amendments thereto) shall be signed by at least one attorney of record or, if the party is not represented by an attorney, all papers shall be signed by the party. An attorney's/participant's password issued by the court

combined with the user's identification, serves as and constitutes the attorney's/participant's signature. Therefore, an attorney/participant must protect and secure the password issued by the court. If there is any reason to suspect the password has been compromised in any way, it is the duty and responsibility of the attorney/participant to immediately notify the court. This should include the resignation or reassignment of the person with authority to use the password. The Court will immediately delete that password from the electronic filing system and issue a new password.

3. An attorney's/participant's registration will not waive conventional service of a summons and complaint, subpoena, or other judicial process; submit the client to the jurisdiction of the Court; or operate as a consent to accept service of pleadings, documents, and orders in actions in which such attorney/participant has not entered an appearance. An attorney's/participant's registration will constitute a waiver in law only of conventional service of other non-process pleadings, documents, and orders in the case. The attorney/participant agrees to accept, on behalf of the client; service of notice of the electronic filing by hand, facsimile or authorized e-mail.

4. Upon receipt of your login and password, you are strongly encouraged to change your password, which may be done through the Utilities function, to a name easily recalled. **You may be subjected to a fee, should the Clerk's Office have to create a new password for you, or alternatively, you may be required to appear in person to receive your new password.**

5. Attorneys who are active members of the bar of this Court, or government attorneys who are employed or retained by the United States, or who have been permitted to proceed *pro hac vice*, must file pleadings electronically.

Please return this form to:

U.S. District Court for the District of Columbia
Attn: Attorney Admissions
333 Constitution Avenue NW, Room 1825
Washington, DC 20001

Or FAX to:

Peggy Trainum
U.S. District Court for the District of Columbia
(202) 354-3023

Applicant's Signature

Full Last Name | Initial of First Name | Last 4 Digits SS#

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Notice of Filing Civil Action was served on Applicant on November 3, 2005 by mailing a copy thereof via first-class mail, postage prepaid, addressed as follows:

Lawrence Harbin, Esq.
McIntyre, Harbin & King LLP
500 Ninth Street SE
Washington, DC 20003

Antonio Borrelli