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

ARTISAN CINEMATIC ENTERPRISES, INC.	:	
Opposer,	:	
v.	:	Opposition No.91153357
ARTISAN ENTERTAINMENT INC. p.k.a. LIVE ENTERTAINMENT INC.	:	Opposition No.91154745
Applicant.	:	

OPPOSER'S RESPONSE TO
APPLICANT'S MOTION FOR SUMMARY JUDGMENT

Applicant, Artisan Entertainment Inc., has filed a motion for summary judgment based upon its assertion that Opposer, Artisan Cinematic Enterprises, Inc.'s lacked standing to bring the Notices of Opposition. Applicant's motion was based upon its position that, since the Opposer did not timely answer Applicant's Requests for Admission, "it has admitted that *Applicant* has never produced or distributed motion pictures or videos and admitted that is was not rendering services under its mark as of September 1, 1985, its claimed date of first use. Therefore, *Applicant* has no standing to bring this Notice of Opposition." Emphasis added.

Setting aside the fact that the Applicant appears to be mistakenly arguing that the Applicant, itself, has never used its mark nor has standing to bring this action, the Opposer admits no such thing. Applicant had in its possession documents that had been produced by the Opposer over the course of several years of discussions between the parties that clearly demonstrate Opposer's use of its mark in commerce as originally claimed. Why the Applicant

chose to ignore these previously produced documents and rely instead on Opposer's delay in answering admissions suggests either the motion was prepared without much thought or it was intended to mislead the Board as to the facts in the case. Furthermore, the appropriate procedure for compelling a party's response to discovery requests is through a motion to compel discovery under 37 CFR § 2.120(e) and not via motion for summary judgment.

Nevertheless, since the filing of Applicant's Motion for Summary Judgment, the Opposer has provided responses to Applicant's discovery requests, has consented to Applicant's request for an extension of time to take discovery, has given deposition testimony and has continued a dialog with the Applicant in an effort to get this matter resolved amicably. Had the Applicant truly believed that there were no questions of material fact and that Summary Judgment was appropriate, it would not have needed the extension of time to take even more discovery. Also, since the delay in Opposer's providing discovery responses is no longer an issue, the Applicant is obligated to notify the Board in writing that the discovery issues no longer require adjudication and withdraw its pending motion.

The declaration of James R. Eley, the President of the Opposer, is attached hereto in support of this Response.

For the reasons stated above and since discovery is not yet complete and questions of material facts still remain, Applicant's Motion for Summary Judgment not supported by law and should be summarily denied.

Respectfully submitted,

ARTISAN CINEMATIC ENTERPRISES, INC.

Date: September 25, 2002

By: _____

James R. Eley, Reg. No. 36,790
Attorney for Opposer

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Certificate of Mailing

I hereby certify that this pleading is being deposited with the United States Postal Service as Express Mail No. EL589380031US postage paid on this 25th day of September, 2003 in an envelope addressed to the following:

BOX TTAB
NO FEE
Assistant Commissioner of Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Pixie I. Picketts

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Opposer,	:	
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ARTISAN ENTERTAINMENT INC. p.k.a. LIVE ENTERTAINMENT INC.	:	Opposition No.91154745
Applicant.	:	

DECLARATION OF JAMES R. ELEY

I, James R. Eley, hereby make this declaration of my own personal knowledge in support of Opposer's Response to Applicant's Motion for Summary Judgment.

1. That I am the President of and counsel for Artisan Cinematic Enterprises, Inc. ("Artisan") a company that I incorporated in Ohio in 1985.

2. That, since incorporating in 1985, Artisan has been an Ohio corporation and remains its good standing with the Ohio Secretary of State's office.

3. That, since incorporating in 1985, Artisan has consistently filed its income tax returns, personal property tax returns and all necessary documents to maintain its status as an Ohio corporation.

4. That beginning in 1985 Artisan began a project to develop feature motion pictures, in particular one entitled DRIVEAWAY.

5. That while the screenplay for DRIVEAWAY was under development, I promoted the project full-time under the Artisan name and sought participation of all the major motion picture studios and distributors via telephone, mailings and the attendance of seminars, all outside the state of Ohio.

6. That the screenplay treatment that I mailed out generated a significant amount of interest in the trade and numerous potential production partners requested copies of the screenplay to read upon its completion.

7. That during the development of the screenplay I also negotiated with various companies for product placement in the film, contacted the film bureaus in nearly every state seeking information and assistance in scouting film locales and lined up acting talent for the film.

8. That, at the time that the Applicant, Artisan Entertainment Inc., adopted its nearly identical mark, the subject matter of these oppositions, Opposer Artisan was listed with the Ohio Secretary of State as a corporation in good standing.

9. That since beginning development of the DRIVEAWAY project in 1985, Artisan has never abandoned, intended to abandon nor demonstrated an intention to abandon its rights in its ARTISAN mark.

10. That Artisan still intends to produce the DRIVEAWAY project and release it under the ARTISAN label, which it still owns and has the senior right to use.

11. That because of the size of the Applicant's company and the amount of resources it has to spend on promoting its junior mark, there will be no less than reverse confusion when Artisan eventually secures funding for, produces and distributes its DRIVEAWAY film project.

I, the undersigned authorized signatory of Opposer, being hereby warned that willful false statements and the like 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 outcome of this action, declare that I am authorized to execute this document on behalf of Opposer; and that I believe the foregoing declaration to be true; and all statements made of my own knowledge in this application are true; and all statements made on information and belief are believed to be true.

Date: Sept. 25, 2003

James R. Eley

THOMPSON HINE
BRUSSELS CINCINNATI CLEVELAND COLUMBUS DAYTON NEW YORK WASHINGTON, D.C.

September 25, 2003

Trademark Trial & Appeals Board
Assistant Commissioner of Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Via Express Mail EL589380031US

RE: *Artisan Cinematic Enterprises, Inc. v. Artisan Entertainment, Inc.*
Opposition No. 91153357
Opposition No. 91154745

Dear Sir/Madam:

Enclosed for filing is the original and two copies of the Opposer's Response to Applicant's Motion for Summary Judgment and Declaration of James R. Eley in the above-noted matter. Please date stamp the enclosed acknowledgement postcard and return it to us. Thank you.

Sincerely,

Pixie I. Picketts
IP Assistant

Enclosure

cc: Thomas W. Brooke, Esq. w/enc.

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