

Handwritten initials: HAB

TRADEMARK TRIAL AND APPEAL BOARD
UNITED STATES PATENT AND TRADEMARK OFFICE



ARTISAN CINEMATIC ENTERPRISES INC.

Opposer,

v.

ARTISAN ENTERTAINMENT INC.

Applicant.

08-04-2003

U.S. Patent & TMO/TM Mail Rpt Dt. #22

Opposition No. 91153357

Opposition No. 91154745

APPLICANT'S MOTION FOR SUMMARY JUDGMENT

Applicant, Artisan Entertainment Inc., ("Applicant") hereby moves for Summary Judgment under Fed.R.Civ.P. 56 against Opposer Artisan Cinematic Enterprises, Inc. ("Opposer").

Applicant served its initial round of discovery, including Requests for Admission, on January 31, 2003. A copy of "Applicant's First Set of Interrogatories, Requests for Production of Documents and Things and Requests for Admission" is attached and made a part hereof as Exhibit 1. Opposer did not respond and did not provide any sort of explanation for its failure to respond.

On April 10, 2003, counsel for Applicant wrote counsel for Opposer, noting that no responses had been served. A copy of this letter is attached and made a part hereof as Exhibit 2. Counsel for Applicant, Mr. James Eley, also President of Applicant, responded with an electronic mail message on April 22, 2003. A print

out of this message is attached and made a part hereof as Exhibit 3. He promised to provide responses "by the end of the week," but he did not.

Counsel for Applicant reminded Mr. Eley of his missed obligation in a letter dated May 12, 2003, a copy of which is attached and made a part hereof as Exhibit 4. At the end of May Mr. Eley made a settlement offer via electronic mail. Counsel for Applicant responded on June 3, once again reminding him of his duty to provide responses to discovery. The following Monday, June 9, 2003, Mr. Eley responded with yet another promise to provide discovery responses, stating that "[t]hese should be sent out yet today." A printout of this complete exchange is attached and made a part hereof as Exhibit 5.

Despite the assurances made on June 9, Mr. Eley did not send responses until July 17, 2003, over four months after they were due. Rule 36(a) of the Federal Rules of Civil Procedure clearly provides that the matter of a Request for Admission:

is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter . . .

Therefore Opposer has admitted each of the Requests for Admission served by Applicant.

Applicant's Requests for Admission are as follows:

REQUEST FOR ADMISSION NO. 1

Opposer has never produced and distributed a Motion Picture for theatrical release under Opposer's mark.

00718700001149

REQUEST FOR ADMISSION NO. 2

Opposer has never produced and distributed videos embodying motion pictures for general distribution to the public under Opposer's mark.

REQUEST FOR ADMISSION NO. 3

Admit that the services claimed in Opposer's Application Serial No. 75/765,407 were not rendered in interstate commerce as of September 1, 1985, Opposer's claimed date of first use.

Because Opposer failed to serve timely answers to Applicant's Requests for Admission, it has admitted that Applicant has never produced or distributed motion pictures or videos and admitted that it was not rendering services under its mark as of September 1, 1985, its claimed date of first use.

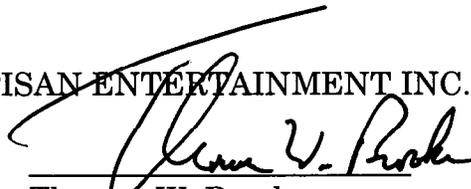
Therefore, Applicant has no standing to bring this Notice of Opposition. It has admitted that it does not actually use the mark **ARTISAN CINEMATIC** in commerce. Without use, there can be no consumer confusion.

6671600001790

For the foregoing reasons, Applicant requests that Judgment be granted in its favor and the Opposition dismissed with prejudice.

ARTISAN ENTERTAINMENT INC.

By:

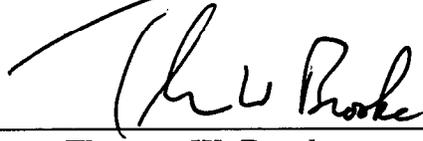


Thomas W. Brooke
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 663-7271 (Phone)
(202) 955-5564 (Fax)

08/14/2003 11:40 AM

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing Applicant's Motion for Summary Judgment was sent by first-class mail, postage prepaid, to counsel for Artisan Cinematic Enterprises Inc., James R. Eley, Esq., Thompson Hine, LLP, 10 W. Broad Street, Suite 700, Columbus, Ohio 43215, on this 4th day of August 2003.



Thomas W. Brooke

WAS1 #1202448 v1

INSTRUCTIONS AND DEFINITIONS

INSTRUCTIONS AND DEFINITIONS

A. These discovery requests require responses which are complete and accurate as of the date when such responses are made.

B. These discovery requests are continuing in character so as to require Opposer to supplement its responses as to:

1. the identity of persons having knowledge of discoverable matters;
2. the identity of each person expected to be called as an expert witness at trial, the subject matter on which the expert is expected to testify, and the substance of the expert's testimony. Fed.R.Civ.P. 26(e)(1).

C. Opposer has a duty to amend a response if Opposer obtains information indicating that the response was incorrect when made, or that the response, though correct when made, is in some material respect incomplete or incorrect. Fed.R.Civ.P. 26(e)(2).

D. As used herein, the following definitions apply:

1. "Communication". The term "communication(s)" means the information that has been transmitted (in the form of facts, ideas, inquiries, or otherwise), regardless of means utilized.

2. "Document". The term "document(s)" has the meaning ascribed to it in Fed.R.Civ.P. 34(a), and includes, but is not limited to, every writing or record of every type and description that is or has been in the possession, control, or custody of Opposer or which Opposer has knowledge, including without limitation: originals, masters and every copy of writings, including handwritings, and printed, typed or other graphic or photographic matter including film or microfilm, video tape, recordings (tape, disc or other), correspondence,

communications, contracts, agreements, assignments, licenses, purchase orders, invoices, statements, memoranda, notes (in pencil, ink, or typewritten), letters, notebooks, reports, photographs, drawings, tracings, sketches, charts, catalogs, brochures, advertisements, records of communications oral and otherwise, instructions, telegrams, studies, surveys, minutes, reports, calendars, inter-office communications, price lists, bulletins, circulars, statements, manuals, summaries, maps, charts, graphs, invoices, canceled or voided checks, bills or statistical material. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

3. "Data". The term "data" shall mean any facts, documents or communications, oral or otherwise, of which Opposer has knowledge, information or belief.

4. "Identify" or "Specify". As used herein, "identify" or "specify" when used in reference to:

(a) a person who is an individual shall mean to state his or her full name, present or last known residence address (designating which), and present or last known position or business affiliation (designating which), job title, employment address, and business and residence telephone numbers;

(b) a person who is a firm, partnership, corporation, proprietorship, association, or other organization or entity shall mean to state its full name, present or last known (designating which) address, telephone number, legal form of such entity or organization, (including state and country of incorporation or organization) and the identity of its present and former officers, directors, controlling shareholder(s) and all employees, agents, and staff members who have responsibilities relating to use of trademarks;

(c) data, shall mean to state: in the case of a document, the title (if any), the date, author(s), sender(s), recipient(s), the identity of the persons signing it, type of document (i.e., a letter, memorandum, book, telegram, chart, etc.) or some other means of identifying it, its present location or custodian and whether Opposer is in the possession of the original, master, or

a copy of the document, and if not in possession of the original, master or copy to furnish the name and last known address of the custodian of the original, master or copy; in the case of an oral communication, the date, subject matter, communicator, the recipient of the communication, nature of communication, whether it was recorded, and the identity of any witness thereto; and in the case of a fact, the source thereof.

5. The words/phrases "identity", "circumstances", "detail(s)", and "all information", whether used alone or in connection with any other words, shall include, but are not limited to, identifying all facts, persons, places, dates, events, documents, physical items of any kind, time periods, geographical locations, data, communications of any kind, or any other information in any way related to, pertaining to, connected with or otherwise responsive to the interrogatory or document request such that all information shall be brought within the scope of the interrogatory or document request which may otherwise be deemed not to be covered by the interrogatory or document request.

6. The words/phrases "respecting", "relating", "referring to", or "regarding", whether used alone or in connection with any other words, shall mean making a statement about, referring to, mentioning, discussing, describing, reflecting, dealing with, consisting of, comprising, recording or in any other way pertaining to the subject either in whole or in part directly or indirectly.

7. "Opposer". The term "Opposer" shall mean Artisan Cinematic Enterprises, Inc. and, where applicable, its officers, directors, employees, agents and representatives.

8. "Applicant". The term "Applicant" shall mean Artisan Entertainment Inc.

9. "Person". The term "person" shall include without limitation, any natural person or any business, business association, business entity, partnership, corporation, legal, or governmental entity. Whenever an interrogatory requests identification of persons, as to those individuals named in response to the interrogatory now in the employ of or associated with Applicant, state the title or position, duties and present residence and business addresses of each such individual. As to those "persons" who have previously been but are not now in the employ

of or associated with Opposer, state the periods of employment or association with Applicant, the person's title or positions during that period, and the last known residences and business address of such persons. As to all "persons" state their residence and business addresses.

10. "And" and "Or". The connectives "and" and "or" shall be construed broadly, both conjunctively and disjunctively, to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

11. "Date". The term "date" shall mean the exact day, month and year, if ascertainable, or if not, the best approximation, including the temporal relationship to other events.

12. "Number". The use of the singular form of any word includes the plural and vice versa.

13. "Applicant's Mark". Unless otherwise specified, the phrase "Applicant's Mark" refers to the trademark and service mark ARTISAN ENTERTAINMENT (Stylized).

14. "Applicant's Services". Unless otherwise specified, the phrase "Applicant's Services" refers to "providing information on current and future movie offerings via a global computer network."

15. "Opposer's Mark". Unless otherwise specified, the phrase "Opposer's Mark" refers to the service mark ARTISAN.

II. INTERROGATORIES

INTERROGATORY NO. 1

Identify each officer of Opposer and each officer's position with Opposer since 1985.

INTERROGATORY NO. 2

Identify each officer or employee responsible for production and distribution of commercial motion pictures, and identify each person's area of responsibility.

INTERROGATORY NO. 3

Identify each motion picture produced and distributed for theatrical release including:

- A. Title;
- B. Year of production;
- C. Year of theatrical release; and
- D. Territory in which each motion picture was theatrically released.

INTERROGATORY NO. 4

Identify each video encompassing a motion picture produced and distributed to the general public including:

- A. Title;
- B. Date of distribution of each title for release to the public.
- C. Year date of release of video;
- D. Territories in which the videos were distributed; and
- E. Number of videos sold for each title.

INTERROGATORY NO. 5

Identify each motion picture distributor to which Opposer has promoted The Driveaway Movie Project, including the individual contacted at each distributor.

INTERROGATORY NO. 6

Describe the circumstances in which Opposer became aware of Applicant's application herein opposed, including the date on which Opposer learned of the application.

INTERROGATORY NO. 7

Identify each business entity that has acted at the direction of Opposer or cooperation with Opposer in any way in connection with Opposer's commercial use of Opposer's mark and identify each person that has acted as Opposer's business partner, agent, representative, or managerial employee in any way in connection with Opposer's commercial use of Opposer's mark.

INTERROGATORY NO. 8

Identify any actions Opposer has taken against third party uses of ARTISAN in any aspect of the entertainment industry, including;

- (a) Name of person or entity against which action was taken.;
- (b) Basis on which the action was taken; and
- (c) Resolution of action.

INTERROGATORY NO. 9

Identify all searches conducted by Opposer for the mark ARTISAN prior to:

- (a) the filing of Application Serial No. 75/765,407
- (b) prior to the filing of the subject opposition

09/18/2009 11:00 AM

INTERROGATORY NO. 10

Identify each instance of actual confusion of which Opposer is aware and which was occasioned by Applicant's use of the mark **ARTISAN ENTERTAINMENT (stylized)**. With respect to each instance of actual confusion describe:

- (a) The person or entity confused;
- (b) The nature of the confusion;
- (c) The date and circumstances under which the confusion occurred; and
- (d) The damage suffered by Opposer as the result of the confusion.

INTERROGATORY NO. 11

Identify the names of Opposer's properties registered with the Motion Picture Association of America including identification of the screenplay submitted to the Guild.

INTERROGATORY NO. 12

Identify each instance in which Opposer's mark was featured in a newspaper or was the subject of a radio or television interview, including: the media in which Opposer's mark was featured and the date of each feature in each media.

INTERROGATORY NO. 13

Identify and describe in detail all types of media, including publications, radio and television, through which Opposer has advertised its services, and state the dollar amounts, by

type of media and by date, which have been expended by Opposer in advertising its services under the **ARTISAN** mark.

INTERROGATORY NO. 14

Identify the person or persons most knowledgeable about:

- (a) The marketing and advertising of the services offered under the **ARTISAN** mark,
and
- (b) The sale or licensing of services under the **ARTISAN** mark.

INTERROGATORY NO. 15

For each and every Interrogatory above, identify the individual or individuals answering the Interrogatory, and each person who provided any information including opinions, advice, reports, studies, or facts on which you are answered to any of the foregoing Interrogatories was based, specifying each and true Interrogatory to which he or she contributed information.

III. REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

Opposer is hereby requested to produce for inspection and/or copying by Applicant, or to cause copies to be provided to Applicant, the documents and things specified hereunder, to the extent that such documents and things are in the possession, custody or control of Opposer or Opposer's attorneys:

REQUEST NO. 1

Any documents, other than those subject to attorney-client privilege, identified in response to Interrogatory No. 1.

REQUEST NO. 2

Any documents, other than those subject to attorney-client privilege, identified in response to Interrogatory No. 2.

REQUEST NO. 3

Documents which support Opposer's answer to Interrogatory No. 3.

REQUEST NO. 4

Documents which support Opposer's answer to Interrogatory No. 4.

REQUEST NO. 5

Documents which support Opposer's answer to Interrogatory No. 5.

REQUEST NO. 6

Documents that refer to or relate to the circumstances identified by Opposer in answer to Interrogatory No. 6.

REQUEST NO. 7

Documents involved in any actions identified in Opposer's answer to Interrogatory No. 8.

REQUEST NO. 8

Copies of any searches identified by Opposer in response to Interrogatory No. 9.

REQUEST NO. 9

Documents upon which Opposer relied in its Answer to Interrogatory No. 10.

REQUEST NO. 10

For each video marketed under or by reference to the Applicant's Mark, a sample of each different package, label, wrapper, instructional manual, package insert or other form of packaging on which the Opposer's Mark has appeared.

REQUEST NO. 11

Copies of the Motion Picture Association of America's listing of Opposer's properties and a copy of any material from the Guild evidencing submission of the screenplay as identified in response to Opposer's Answer to Interrogatory No. 11.

REQUEST NO. 12

Copies of all documents or videos on interviews identified in Opposer's answer to No. Interrogatory No. 12.

REQUEST NO. 13

Documents which evidence, refer to, or otherwise relate to Applicant's actual annual advertising expenses and gross sales or license fees, for videos and motion picture, in terms of units and dollars, of each product and service which has been offered by Opposer under or by reference to Opposer's Mark.

REQUEST NO. 14

Copies of the results of any survey, poll or similar investigation conducted by or on behalf of Opposer relating to recognition of Opposer's Mark by the public or the trade.

REQUEST NO. 15

A sample of each different print media advertisement, catalog, direct mail piece, brochure, or other item of printed promotional material which Opposer has prepared, caused to be prepared and/or distributed in connection with the advertising and promotion of Opposer's products and/or services offered under or by reference to Opposer's Mark.

REQUEST NO. 16

A copy of the script for each different television or radio advertisement, on interview Opposer has prepared, caused to be prepared and/or used in connection with the advertising and promotion of Opposer's products and/or services offered under or by reference to Opposer's Mark.

REQUEST NO. 17

For each sample of promotional material produced in response to Request No. 15 above, and for each script produced in response to Request No. 16 above, documents which set forth, establish, or substantiate the periods of time during which Opposer used such promotional materials and scripts in marketing products or services in the United States, or enjoyed unpaid promotional endorsements, print exposure or television interviews.

REQUEST NO. 18

Documents which evidence, refer to or otherwise relate to any monetary expenditures which Opposer has made in connection with the advertising and promotion of Opposer's products and/or services offered under or by reference to Opposer's Mark.

REQUEST NO. 19

All correspondence between any advertising agencies and Opposer relating or referring to the advertising or promotion of Opposer's products and/or services offered under or by reference to Opposer's Mark.

REQUEST NO. 20

All documents, other than those subject to attorney-client privilege, relating or referring to the creation and selection of Opposer's Mark.

REQUEST NO. 21

Copies of the findings resulting from any market research or competitive research done by or for Opposer in relation to Opposer's or Applicant's Mark.

REQUEST NO. 22

All documents, other than documents subject to attorney-client privilege, wherein Applicant or Applicant's Mark is referred to or mentioned.

REQUEST NO. 23

Copies of all letters and other communications published, sent to and/or addressed to third parties by Opposer relating or referring to the subject matter of this action.

REQUEST NO. 24

All documents, other than those subject to attorney-client privilege, referring or relating to any investigation, including any inquiry, survey, poll, credit check or other type of investigation Opposer has ever conducted or caused to be conducted involving:

- (a) Applicant's business;
- (b) Applicant's Mark; or
- (c) Applicant.

REQUEST NO. 25

All documents, other than those subject to attorney-client privilege, that refer or relate to any instances wherein a person has been confused, mistaken or deceived as to the source of products and/or services offered under or by reference to Opposer's Mark or Applicant's Mark.

REQUEST NO. 26

Copies of all written agreements to which Opposer is a party that relate to the acquisition, registration, use, promotion, and/or licensing of Opposer's Mark, and all correspondence, other than correspondence subject to attorney-client privilege, relating or referring to such agreements.

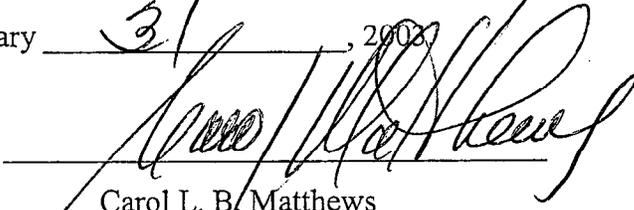
REQUEST NO. 27

All documents relating or referring to any license, assignment or right granted by Opposer to a third party, or by a third party to Opposer, regarding use of Opposer's Mark, including correspondence, other than correspondence subject to attorney-client privilege, relating to the same.

09/19/2008 10:37:10

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing **OPPOSER'S FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS, AND REQUESTS FOR ADMISSION** was sent by first class mail, postage pre-paid to James R. Eley, Esq. at Thompson Hine LLP, located at 10 W. Broad Street, Suite 700, Columbus, OH 43215-3435 on January 31, 2008



Carol L. B. Matthews

Law Offices

HOLLAND & KNIGHT LLP

2099 Pennsylvania Avenue, N.W.

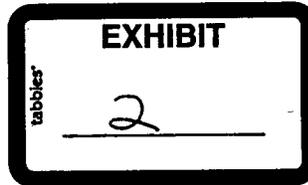
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*Representative Office

April 10, 2003

CAROL L.B. MATTHEWS
202-663-7270

Internet
Address: cmatthews@hklaw.com

James R. Eley, Esq.
Thompson Hine LLP
10 West Broad Street, Suite 700
Columbus, Ohio 43215-3435

Re: Artisan Cinematic Enterprises, Inc. v. Artisan Entertainment Inc.
Opposition Nos. 91153357 and 91154745 (consolidated)

Dear Mr. Eley:

I draw your attention to the fact that we served Discovery on you on January 31, 2003.

Your client's Answers were due thirty five (35) days from the date of service, that was March 7, 2003.

It is now April 10, 2003, and we have not received anything in response to the outstanding Discovery. Please advise whether you intend to respond to Discovery and when we can expect the responses.

I would appreciate your very prompt response.

Very truly yours,

HOLLAND & KNIGHT LLP

Carol L. B. Matthews

/nac

cc: B. James Gladstone, Esq.

WAS1 #1174249 v1

Matthews, Carol L B (WAS - X77270)

From: James Eley [James.Eley@thompsonhine.com]
Sent: Tuesday, April 22, 2003 10:08 AM
To: cmatthews@hklaw.com
Subject: Artisan Oppositions

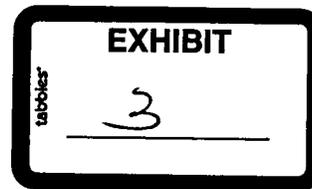
Re: Oppositions 91153357 and 91154745 Consolidated

Dear Carol,

I am in receipt of your letter dated April 10, 2003 inquiring as to the status of our discovery responses. I have been buried in a couple of litigation matters and am now in the process wrapping up the answers to your requests. I expect to have them to you by the end of the week. Thank you for your patience.

Jim Eley

James R. Eley
THOMPSON HINE LLP
10 West Broad Street, Suite 700
Columbus, OH 43215-3435
614-469-3228 direct
614-469-3361 fax
james.eley@thompsonhine.com



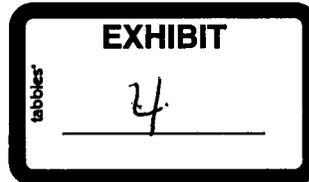
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Rio de Janeiro	*Representative Office



May 12, 2003

CAROL L.B. MATTHEWS
202-663-7270

Internet
Address: cmatthews@hklaw.com

James R. Eley, Esq.
Thompson Hine LLP
10 West Broad Street, Suite 700
Columbus, Ohio 43215-3435

Re: Artisan Cinematic Enterprises, Inc. v. Artisan Entertainment Inc.
Opposition Nos. 91153357 and 91154745 (consolidated)

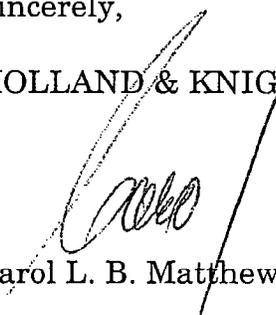
Dear Jim:

Your email of April 22, 2003 indicated that your client's Discovery responses would be sent to us by the end of the week. The end of that week was April 25, 2003, two (2) weeks ago.

Your client's Answers are now over a month late and I would like a firm date on which I will receive the Discovery responses. I look forward to hearing from you.

Sincerely,

HOLLAND & KNIGHT LLP



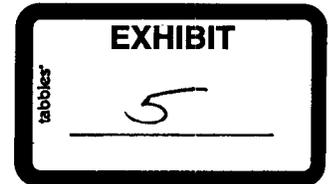
Carol L. B. Matthews

/nac
cc: B. James Gladstone, Esq.

WAS1 #1182134 v1

Matthews, Carol L B (WAS - X77270)

From: Matthews, Carol L B (WAS - X77270)
Sent: Monday, June 09, 2003 1:25 PM
To: 'Eley, James'
Subject: RE: Artisan Discovery



Fine. How about service of documents by July 18, while we are still in discovery.

-----Original Message-----

From: Eley, James [mailto:James.Eley@thompsonhine.com]
Sent: Monday, June 09, 2003 1:21 PM
To: Matthews, Carol L B (WAS - X77270)
Subject: RE: Artisan Discovery

What do you mean by reserving the documents? We are open to consider whatever offer your client would like to advance. We have never received anything from your client even though we have submitted two offers on behalf of our client.

-----Original Message-----

From: cmatthews@hklaw.com [mailto:cmatthews@hklaw.com]
Sent: Monday, June 09, 2003 11:44 AM
To: Eley, James
Subject: RE: Artisan Discovery

You can hold them. The November 8 date was clearly a typographical error. We are going to reserve the documents which gives you another 39 days since we set July 18 for production of documents. This will give you and your client an opportunity to consider settlement on a more reasonable basis.

CAROL L.B. MATTHEWS

HOLLAND & KNIGHT LLP

2099 Pennsylvania Avenue, N.W.

Washington D.C 20006

Phone: 202-955-3000

Fax: 202-955-5564

Email: cmatthews@hklaw.com

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-----Original Message-----

From: Eley, James [mailto:James.Eley@thompsonhine.com]

Sent: Monday, June 09, 2003 11:32 AM
To: Matthews, Carol L B (WAS - X77270)
Subject: RE: Artisan Discovery

Carol,

These should be sent out yet today. Thanks for your patience but I had hoped we could resolve the issue. I note that your production requests do not seek production of the documents until November 2003 anyway so I expect the delay in our responses has not prejudiced your client.

Jim Eley

-----Original Message-----

From: cmatthews@hklaw.com [mailto:cmatthews@hklaw.com]
Sent: Tuesday, June 03, 2003 11:07 AM
To: Eley, James
Cc: jgladstone@artisanent.com
Subject: RE: Artisan Settlement Proposal

We are not prepared to settle at this point. I look forward to receiving the discovery responses which are now almost two months overdue.

CAROL L.B. MATTHEWS

HOLLAND & KNIGHT LLP

2099 Pennsylvania Avenue, N.W.

Washington D.C 20006

Phone: 202-955-3000

Fax: 202-955-5564

Email: cmatthews@hklaw.com

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-----Original Message-----

From: Eley, James [mailto:James.Eley@thompsonhine.com]
Sent: Wednesday, May 28, 2003 4:13 PM
To: cmatthews@hklaw.com
Subject: Re: Artisan Settlement Proposal

OFFER OF SETTLEMENT - SUBJECT TO RULE 408
 MADE WITHOUT PREJUDICE

Were you intending to respond to my email of May 12th as stated below? If not, then I will forward you with our discovery requests and the answers to your requests.

06/10/2003 10:05:11 AM

Dear Carol:

In lieu of continued prosecution of the pending consolidated opposition, we propose withdrawing the same, assigning all rights in both the Artisan mark and in the ARTISAN.US domain name to your client for consideration in the amount of \$100,000. Please advise whether Artisan Entertainment finds this offer acceptable. Thanks.

Jim Eley

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