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

In re Application No. 76/476969  
Published January 20, 2004



Hutchison Whampoa Enterprise Limited  
Opposer,

v.

Celestial Pictures Limited  
Applicant.

09-24-2004

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #66

Opposition No. 91161458

Assistant Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513

**OPPOSER'S REPLY BRIEF TO THE MOTION TO DISMISS  
AND AMENDED NOTICE OF OPPOSITION**

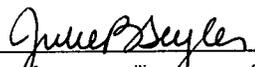
Hutchison Whampoa Enterprises Limited, , a corporation organized and existing under the laws of the British Virgin Islands, with an office at Craigmuir Chambers, Wickhams Cay, Road Town, Tortola British Virgin Islands hereby requests that Applicant's Motion to Dismiss be denied.

**CERTIFICATE OF MAILING**

Date of Deposit : September 22, 2004

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

JULIE B. SEYLER

  
(signature of person mailing paper or fee)

Opposer hereby requests that the Motion to Dismiss be denied. The Notice of Opposition sets forth specific facts concerning Opposer's worldwide use and fame of its trademarks. (Paragraphs 11, 12, and 13). In addition, Opposer pleaded that Applicant had actual knowledge of such use and acted in bad faith in filing the application, and that Opposer would be damaged by the registration of Applicant's mark. In view of the fact that purchasers in the U.S. can access Opposer's website and thereby have access to Opposer's use of its mark, and such accessibility occurred prior to the filing date of Applicant's application, it is submitted that the availability of Opposer's marks in the United States serves as a basis for Section 2(d) and concomitantly that Opposer has pleaded a valid cause of action.

In addition, Opposer believes that it set forth a cause of action under Section 2(a) which prohibits the registration of a trademark that "Consists of or comprises...matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols." Applicant's marks consists of matter which may disparage or falsely suggest a connection with Opposer, and therefore the opposition should move forward on this ground as well as Section 2(d).

Applicant, instead of filing an Answer to the Notice of Opposition, filed a Motion to Dismiss. A Motion to Dismiss is not a responsive pleading. Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure Opposer seeks to amend its Notice of Opposition and a copy of the Amended Notice of opposition is attached. It is requested that the Motion to Dismiss be denied and the opposition be instituted

Respectfully submitted,

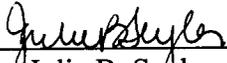
  
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JULIE B. SEYLER  
Attorney for Opposer

**ABELMAN, FRAYNE & SCHWAB**  
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New York, New York 10017  
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by first class mail, postage prepaid on the 22<sup>nd</sup> day of September, 2004 on

Joseph R. Dreitler, Esq.  
Mary R. True, Esq.  
Brian J. Downey, Esq.  
JONES DAY  
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Julie B. Seyler