

**UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451**

Cv

Mailed: November 1, 2005

Opposition No. 91162330

L.C. Licensing, Inc.

v.

Berman, Cary

**Thomas W. Wellington,
Interlocutory Attorney:**

On October 24, 2005, applicant filed a self-captioned "motion to dismiss opposer's opposition due to withholding of evidence during discovery and due to conflicting information obtained during discovery," with several exhibits attached thereto. There is no proof of service of the motion on opposer, as required by Trademark Rule 2.119.

Trademark Rules 2.119(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney, and proof of such service must be made before the paper will be considered by the Board. In a cover page for the motion, applicant has inserted the following, "CC: Carole B. Klinger, Esquire", which indicates that applicant sent a courtesy copy

to opposer's counsel. However, this is insufficient for purposes of proof of service. Moreover, applicant has already been informed by the Board regarding the proof of service requirement (see Board's August 24, 2005 order) and has had ample time to review the pertinent rules and relevant TBMP section.

In view thereof, applicant's motion is not given consideration. Trademark Rule 2.119(a).

Although the motion is not being considered by the Board, we have made a cursory review thereof and find that applicant has also not provided any legal authority or appropriate basis for dismissal in the motion. Specifically, applicant argues that "[o]pposer has withheld discovery by hiding behind the illegal premise that Mr. Tony Shellman could not be produced for a deposition because he is not an employee of the company"; that "[o]pposer's corporate officers are hiding information as they claim that they do not know the name or structure of their corporation"; and that "conflicting information exists regarding the conception of opposer's mark." Applicant also makes reference to certain exhibits. Applicant, however, fails to identify the legal basis for why it is seeking dismissal of the opposer's complaint. To the extent that this is a motion to dismiss for failure to state a claim, it is untimely. See Fed. R. Civ. P. 12(b); see also TBMP § 503.01 (2d ed. rev. 2004). To the extent that the

motion is one for summary judgment, applicant has not argued that there is no genuine issue of material fact remaining for trial. Fed. R. Civ. P. 56.

Discovery has closed. Trial dates remain as set forth in the Board's August 24, 2005 order.

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