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

Proceeding	91162330
Party	Plaintiff L.C. LICENSING, INC L.C. LICENSING, INC ,
Correspondence Address	Kieran G. Doyle Cowan, Liebowitz & Latman, P.C. 1133 Avenue of the Americas NEW YORK, NY 10036-6799 UNITED STATES asc@cll.com
Submission	Other Motions/Papers
Filer's Name	Kieran G. Doyle
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Signature	/Kieran G. Doyle/
Date	10/05/2006
Attachments	ENYCEMotion.pdf (4 pages)(28312 bytes) ENYCEDeclaration.pdf (4 pages)(81241 bytes)

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

In the Matter of Application Serial No. 78/320,850
For the Mark ENYCE
Filed: October 30, 2003

-----x,	:	
L.C. LICENSING, INC.,	:	
	:	
Opposer,	:	Opposition No. 91/162,330
	:	
v.	:	
	:	
CARY BERMAN,	:	
	:	
Applicant.	:	
-----	:	x

**OPPOSER’S MOTION FOR AN ORDER AUTHORIZING
THE FILING OF AN UNSIGNED TRANSCRIPT OF
APPLICANT’S JUNE 29, 2006 DISCOVERY DEPOSITION**

Upon the annexed Declaration of Kieran G. Doyle, dated October 5, 2006 (“Doyle Decl.”), and the exhibits thereto, Opposer L.C. Licensing, Inc. (“Opposer”) hereby moves for an order authorizing Opposer to file during the testimony period an unsigned transcript of the June 29, 2006 discovery deposition of Applicant Cary Berman and seeking a telephone conference with Applicant and the Interlocutory Attorney.

MEMORANDUM IN SUPPORT OF MOTION

On June 29, 2006, Applicant Cary Berman testified during a discovery deposition. (Doyle Decl. ¶3). That testimony was transcribed by Francis X. Frederick of TSG Reporting. (Id. ¶ 4). By letter dated July 28, 2006, Opposer’s counsel forwarded that transcript requesting

that Applicant “Pursuant to TTAB Rule 703.01(j) and 37 C.F.R. § 2.123(e)(5), please review and sign it, and return the original signed transcript.” (Id. ¶ 5 and Exh. A to Doyle Decl.).

Applicant, Mr. Berman did not return the transcript or reply to the July 28, 2006 letter. (Id. ¶ 7).

On September 22, 2006 and again on September 25, 2006, counsel for Opposer called Mr. Berman to ask him to review, sign and return the transcript. In both of those conversations, Mr. Berman told Opposer’s counsel that he may never sign and return the transcript. (Id. ¶ 8).

In the September 25, 2006 call, Opposer’s counsel sought Mr. Berman’s consent to suspend the proceeding pending the Board’s resolution of Opposer’s motion to amend its Notice of Opposition. Mr. Berman refused this request necessitating a call amongst Opposer’s counsel, Mr. Berman and Interlocutory Attorney Thomas W. Wellington. (Id. ¶ 9).

After the Interlocutory Attorney ruled in Opposer’s favor on the motion to amend and the motion to suspend, Opposer’s counsel broached the subject of Mr. Berman’s failure to return the transcript as required pursuant to TBMP Rule 703.01(j) (Id. ¶ 10.). Although the Interlocutory Attorney did not entertain an argument regarding the transcript, he did instruct the parties to review and comply with TBMP 703.01(j) (id. ¶ 11.), which provides:

When the deposition has been transcribed, the deposition shall be carefully read over by the witness or by the officer to him, and shall then be signed by the witness in the presence of any officer authorized to administer oaths unless the reading and the signature be waived on the record by agreement of all parties.

On Monday October 2, 2006, Opposer’s counsel called Mr. Berman to ask whether he intended to sign and return the transcript. Mr. Berman answered “I will not.” (Id. ¶ 12).

Conclusion

For the foregoing reasons, Opposer respectfully requests that the Board issue an order authorizing Opposer to file during the testimony period an unsigned transcript of June 29, 2006 discovery deposition of Applicant, Cary Berman.

Opposer also requests that the Board schedule a telephone conference to resolve this issue at the Interlocutory Attorney's earliest convenience.

Dated: New York, New York
October 5, 2006

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.

By: /Kieran G. Doyle/
Arlana S. Cohen
Kieran G. Doyle
Eric J. Shimanoff

1133 Avenue of the Americas
New York, NY 10036-6799
(212) 790-9200

Attorneys for Opposer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that foregoing OPPOSER'S MOTION FOR AN ORDER AUTHORIZING THE FILING OF AN UNSIGNED TRANSCRIPT OF APPLICANT'S JUNE 29, 2006 DISCOVERY DEPOSITION, with supporting declaration and exhibits, was served on Applicant via fax (866) 508-7700, email autocary@aol.com and Federal Express to Applicant pro se Cary Berman at 1917 Lafayette Road, Gladwyne, PA 19305, on October 5, 2006.

/Kieran G. Doyle/

Kieran G. Doyle

5. By letter dated July 28, 2006, I forwarded that transcript requesting that Applicant, "Pursuant to TTAB Rule 703.01(j) and 37 C.F.R. § 2.123(e)(5), please review and sign it, and return the original signed transcript."

6. That letter is attached hereto as Exhibit A.

7. Mr. Berman did not return the transcript or otherwise reply to the July 28, 2006 letter.

8. On September 22, 2006 and again on September 25, 2006, I called Mr. Berman to ask him to review, sign and return the transcript. In both of those conversations, Mr. Berman told me that he may never sign and return the transcript.

9. In the September 25, 2006 call, I sought Mr. Berman's consent to suspend the proceeding pending the Board's resolution of Opposer's motion to amend its Notice of Opposition. Mr. Berman refused this request, thus necessitating a call amongst Mr. Berman, Interlocutory Attorney Thomas W. Wellington and me.

10. After the Interlocutory Attorney ruled in Opposer's favor on the motion to amend and the motion to suspend, I broached the subject of Mr. Berman's failure to return the transcript as required pursuant to TBMP Rule 703.01(j).

11. Although Interlocutory Attorney did not entertain any argument regarding the transcript, he did instruct the parties to review and comply with TBMP 703.01(j).

12. On Monday, October 2, 2006, I called Mr. Berman to ask whether he intended to sign and return the transcript. Mr. Berman answered "I will not."

Executed this 5th day of October, 2006

/Kieran G. Doyle/
Kieran G. Doyle

EXHIBIT A

Cowan, Liebowitz & Latman, P.C.

Law Offices

FILE COPY

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Kieran G. Doyle
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July 28, 2006

VIA FEDERAL EXPRESS

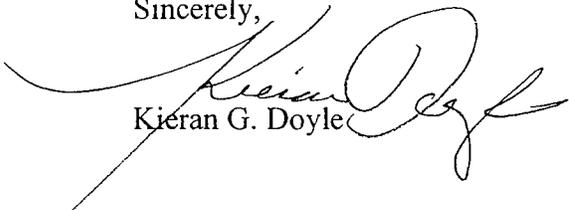
Cary Brett Berman
1917 Lafayette Road
Gladwyne, PA 19035

Re: L.C. Licensing, Inc. v. Cary Berman
Opposition No. 91,162,330 relating to the mark
ENYCE; Our File No. 27153.001

Dear Mr. Berman:

Enclosed is the original transcript from your recent deposition. Pursuant to TTAB Rule 703.01(j) and 37 CFR 2123(e)(5), please review and sign it, and return the original signed transcript to me.

Sincerely,


Kieran G. Doyle

cc: Arlana S. Cohen, Esq.