TTAB

LAW OFFICES OF ELSA RAMO
ENTERTAINMENT * FILM * TELEVISION * CORPORATE
100 UNIVERSAL CITY, BUILDING 6128
UNIVERSAL CITY, CA 91604
(818) 733-0105 FAX (818) 733-2699 CELL (310) 383-3810
ERAMO@ENTERTAINMENTATTORNEY.BIZ

78/340,461

August 4, 2005

Assistant Commissioner for Trademarks
Box TTAB
NO FEE
2900 Crystal Drive
Arlington, Virginia 22202-3513

Re: Opposition Number 91162415

To Whom It May Concern:

Enclosed, for filing in the Patent and Trademark Office before the Trademark Trial and Appeal Board, is the original and two (2) copies of Applicant's Motion for Judgment For Plaintiff's Failure to Prove Cause.

Please acknowledge receipt of the enclosed document by date stamping the attached duplicate sheet and returning it to this office.

Very truly yours,

Elsa Ramo

Enclosures

cc: Daniel Martino (w/enclosures)

08-10-2005
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #77

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Assistant Commissioner for Trademarks
Box TTAB NO FEE
2900 Crystal Drive
Arlington, Virginia 22202-3513

on August 4, 2005.

Elsa Ramo

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

Laxmeter, Joel S., Opposer, v. Martino, Carlos Daniel, Applicant.	Opposition No. 91162415 **MOTION FOR JUDGMENT FOR PLAINTIFF'S FAILURE TO PROVE CASE**

MOTION FOR JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, and the TBMP § 534.02, Applicant Carlos Daniel Martino ("Applicant") hereby motions for judgment against Opposer Joel S. Laxmeter ("Opposer") for failure to prove case. Opposer's testimony period has passed and Opposer has not taken testimony or offered any other evidence without good and sufficient cause. Therefore, Applicant hereby request that judgment be rendered against Opposer due to Opposer's failure to prosecute.

Respectfully submitted,

By:_____

Elsa Ramo
For Applicant
Law Offices of Elsa Ramo
100 Universal City, Bldg 3115
Universal City, CA 91604
Telephone: (818) 733-0105
Fax: (818) 733-2699

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

Laxmeter, Joel S., Opposer, v. Martino, Carlos Daniel, Applicant.	Opposition No. 91162415 **BRIEF IN SUPPORT OF MOTION FOR JUDGMENT FOR PLAINTIFF'S FAILURE TO PROVE CASE**

BRIEF IN SUPPORT OF MOTION FOR JUDGMENT

Statement of Facts

On October 5, 2004, Opposer filed a Notice of Opposition to Applicant. Shortly after on October 7, 2004 the discovery and testimony dates were set as followed:

Discovery period to open:	October 27, 2004
Discovery period to close:	April 25, 2005
30-day testimony period for party in position of plaintiff to close:	July 24, 2005
30-day testimony period for party in position of defendant to close:	September 22, 2005
15-day rebuttal testimony period for plaintiff to close:	November 6, 2005

On November 12, 2004, Applicant's counsel filed an answer to Opposer's notice of opposition. Furthermore, in accordance with 37 CFR § 2.120(a), Applicant's counsel timely served Opposer's counsel request for production of documents propounded to

Opposer on March 7, 2005. In addition, Applicant's counsel also timely served Applicant's responses to Opposer's first set of interrogatories on May 16, 2005. Opposer's counsel also served Applicant's counsel with Opposer's reply to Applicant's first set of request for production on May 13, 2005.

Motion for Judgment Under Trademark Rule 2.132(a)

Pursuant to 37 CFR § 2.121(a)(1), testimony may only be taken during the times assigned unless stipulated by the parties approved by the Board or by order of the Board. If the party in the position of the plaintiff fails to take testimony or offer any other evidence during their allotted time, "any party in the position of defendant may, without waiving the right to offer evidence in the event the motion is denied, move for dismissal on the ground of the failure of the plaintiff to prosecute." 37 CFR § 2.132(a). The parties have not stipulated nor has the Board ordered to extend or reschedule the testimony dates as set. Because Opposer's testimony period has expired and Opposer has failed to take any testimony or offer any other evidence without good and sufficient cause, Applicant motions for dismissal on the ground for the failure of the plaintiff to prosecute. 37 CFR § 2.132(a) and TBMP § 534.02.

Respectfully submitted,

By:_____

Elsa Ramo
For Applicant
Law Offices of Elsa Ramo
100 Universal City, Bldg 3115
Universal City, CA 91604
Telephone: (818) 733-0105
Fax: (818) 733-2699

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

JOEL S. LAXMETER, Opposer, v. CARLOS DANIEL MARTINO, Applicant.	Opposition No. 91162415

CERTIFICATE OF SERVICE UNDER 37 C.F.R. §2.119(a)

I hereby certify that a true and correct copy of the attached Motion For Judgment For Plaintiff's Failure to Prove Cause was served on August 4, 2005, by sending a copy, via US Mail and Fax, prepaid, to the following person(s):

Law Offices of Mark L. Levinson
14724 Ventura Blvd.
Penthouse Suite
Sherman Oaks, California 91402-3513
Fax: 818-461-1744

Date: August 4, 2005.

Elsa Ramo
Of Attorneys for Applicant
Law Offices of Elsa Ramo
100 Universal City Plaza, Building 3115
Universal City, California 91608
Telephone: (818) 733-0105
Facsimile: (818) 733-2699

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niversal City Pl, Bldg 3115
rsal City CA 91608