

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

DUNN
Mailed: March 14, 2006

Opposition No. 91164083

INSPIRATION SOFTWARE, INC.

v.

TEACHER INSPIRED PRACTICAL
STUFF, INC.

Elizabeth A. Dunn, Attorney:

On May 20, 2005, applicant filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6).¹ In support of its motion, applicant alleges that, pursuant to *Kellogg Co. v. Pack'em Enters.*, 951 F.2d 330, 21 USPQ2d 1142 (Fed. Cir. 1991), the dissimilarity of the marks in their entireties substantially outweighs any other relevant factors and is dispositive of the issue of likelihood of confusion. With its motion applicant submitted a TTABVUE listing of other Board proceedings to which opposer is a party.

¹ The delay in acting upon this matter is regretted. Decision on this motion will be expedited once the motion is fully briefed.

Because applicant has submitted matters outside the pleadings, and the motion does not raise an issue regarding the sufficiency of the pleadings but whether opposer can prevail on the merits of the opposition, the motion will be treated as one for summary judgment under Fed. R. Civ. P. 56.

Accordingly, applicant is allowed 30 days from the mailing date stamped on this order to present any additional material made pertinent to such a motion by Fed. R. Civ. P. 56, if so desired. *See Dunkin' Donuts of America, Inc. v. Metallurgical Exoproducts Corp.*, 840 F. 2d 917, 6 USPQ2d 1026 (Fed. Cir. 1988); *Selva & Sons, Inc. v. Nina Footwear, Inc.*, 705 F.2d 1316, 217 USPQ 641 (Fed. Cir. 1983). Opposer is allowed 30 days from the date of service of any such additional materials in which to file a supplemental response, if so desired. If no additional briefs are filed within the time allowed, the Board will rule on the motion for summary judgment as currently briefed.

Proceedings herein are otherwise suspended pending disposition of the motion for summary judgment. Any paper filed during the pendency of this motion which is not relevant thereto will be given no consideration. *See Trademark Rule 2.127(d)*.
