

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

Mailed: March 19, 2008

Opposition No. 91165519

Corporacion Habanos, S.A.

v.

Anncas, Inc.

Linda Skoro, Interlocutory Attorney

This case now comes up on the parties cross motions to strike portions of each parties' notices of reliance based on timeliness. Applicant filed its motion to strike on January 25, 2008, seeking to strike a supplemental rebuttal notice of reliance filed by opposer filed a few days after its testimony period closed.¹ Opposer filed its motion to strike applicant's exhibits to its notice of reliance, in that they were not filed with the Board with the original notice of reliance, timely filed on November 30, 2007.² Opposer also claims that it also did not receive a copy of

¹ Opposer admits it inadvertently omitted the item identified in its supplemental notice when its original notice of reliance was filed.

² Applicant admits that the exhibits were initially mailed to the Board at the Board's previous mailing address, thus resulting in their not making it into the record until December 11, 2007.

the exhibits until later than the date set forth in the certificate of service.³

While both parties have stated grounds that would allow for the striking of both opposer's supplemental rebuttal notice and applicant's exhibits. However, both are curable and in fact have been cured by each obtaining the information needed to present their respective cases.

Additionally, both parties have a long history of disagreement and in that this proceeding has finally reached the point of decision, both motions to strike are hereby denied. The late filed evidence will be deemed of record. *See Weyerhauser Co. v. Katz*, 24 USPQ2d 1230, 1233 (TTAB 1992).

Finally, opposer filed an objection to applicant's evidence grounded on substantive matters. That statement will be considered by the Board when the case is decided on its merits.

Briefing dates remain as set pursuant to Trademark Rules 2.128(a) and (b) based on the Board's trial schedule issued on August 31, 2007. An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

³ Applicant contends the exhibits were provided at the taking of the testimonial deposition. Regardless of when opposer received an official copy of the exhibits, they were available in sufficient time to rebut and object to the evidence.