

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

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

Faint

Mailed: January 23, 2009

Opposition No. 91171133

Learning Annex, LLC

v.

Chiquita Brands L.L.C.

**Before Bucher, Kuhlke and Bergsman,
Administrative Trademark Judges.**

By the Board.

This case now comes up on applicant's fully-briefed motion for summary judgment on the issue of likelihood of confusion, filed August 7, 2008.¹

A party is entitled to summary judgment when it has demonstrated that there are no genuine issues as to any material facts, and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The evidence must be viewed in a light favorable to the nonmoving party, and all justifiable inferences are to be drawn in the nonmovant's favor. *Opryland USA Inc. v. The Great American Music Show, Inc.*, 970 F.2d 847, 23 USPQ2d 1471, 1472 (Fed. Cir. 1992).

Upon careful consideration of the arguments and evidence presented by the parties,² and drawing all

¹ Applicant's amended certificate of service filed August 12, 2008 is noted.

² Opposer's objection to Exhibit E to the Adams declaration submitted by applicant is noted. While we have considered this evidence, we do not find that the printouts from foreign websites

inferences in favor of the nonmoving party, we find that applicant has not demonstrated the absence of a genuine issue of material fact for trial. We find that there are genuine issues of fact at least with respect to the channels of trade and the relatedness of the respective goods.³

In view thereof, the motion for summary judgment is denied, and trial dates are reset as follows:⁴

DISCOVERY PERIOD TO CLOSE:	Closed
30-day testimony period for party in position of plaintiff to close:	March 24, 2009
30-day testimony period for party in position of defendant to close:	May 23, 2009
15-day rebuttal testimony period for plaintiff to close:	July 7, 2009

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

add any significant support to applicant's case as we cannot determine what exposure consumers in the United States may have had to them. This is not a case where we are dealing with sophisticated products. See *In re Ramacle*, 66 USPQ 1222, 1224 (TTAB 2002).

³ The fact that we have identified and discussed only two genuine issues of material fact as sufficient bases for denying the motion for summary judgment should not be construed that these are necessarily the only issues that remain for trial.

⁴ Our decision on summary judgment is interlocutory in nature. Appeal may be taken within two months after the entry of final decision in this case. See *Copelands' Enterprises Inc. v. CNV, Inc.*, 887 F.2d 1065, 1068 12 USPQ2d 1562, 1564-65 (Fed. Cir. 1989).

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Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.
