

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

MAGNADYNE CORPORATION)	Opposition No. 91175280
Opposer,)	
)	Serial No. 76/655. 958
vs.)	Mark: MOVIEVISION
)	
MOVIEVISION INC.,)	
Applicant.)	
)	
_____)	

**APPLICANT'S REPLY TO OPPOSER'S RESPONSE
TO APPLICANT'S MOTION FOR RECONSIDERATION**



08-31-2009

Applicant MOVIEVISION, INC., (“Applicant”) submits its Reply to Opposer MAGNADYNE CORPORATION’s (“Opposer”) Response to Application Motion for Reconsideration, as follows:

Introduction

In sum, Opposer contends that Applicant’s Motion for Reconsideration in its entirety on the following grounds: (1) that Applicant allegedly attempts to introduce additional arguments without citation to supporting evidence in the record; and (2) that Applicant allegedly attempts to reargue points presented in the Main Brief.

As discussed herein below, these arguments are false, and without merits.

Arguments

A. The Arguments Presented By Applicant In Her Motion for Reconsideration Are Supported by Evidence In Record.

Opposer contends that Section 243 of the TBMP prohibits Applicant from introducing additional evidence to support her request for rehearing. Appellant denies Opposer’s mischaracterization of the points and authorities raised by Appellant in her Motion for Reconsideration in that Appellant believes that all the arguments presented in her Motion was well supported by evidence in record.

In its Opposition, Opposer asserts that Applicant’s argument regarding the use of phrase “generic mark” is the first and only time Applicant has allegedly raised the issue. This is absolutely false. While Applicant may not have used the exact word or term “generic” in the arguments that she presented before the Board in her Main Brief, Applicant believes that her argument regarding the words “Movie” and “Vision” as being generic or commonly used terms

in the industry were discussed and/or were impliedly included in Applicant's argument regarding the "strength of mark" argument which was discussed in detail in Applicant's Main Brief, as follows:

"In this case the Opposer's mark is not strong, the mark Movie vision is not a widely recognized trademark nor do they hold a full 1% of the mark place. When in search of a product carried by Movie Vision such as a "10.0" widescreen", a diligent search would result in a list of competitors such as Matsunichi, Coby, Photoblitz, Impecca, and alpine all maker of that product." [See page 2-3 of Applicant's Main Brief]

As further proof or showing of Applicant's insinuation that the words "movie" and "vision" are generic terms, Applicant cited as an example in her Main Brief regarding the general public's use of the common term "Spam", as follows:

"There is a little doubt that SPAM is a distinctive, widely recognized trademark. Hormel has sold over five billion cans of its luncheon meat under the SPAM mark and invested millions of dollars in advertising. As a result, Hormel has a 75 percent share of the canned meat market, and SPAM is eaten in 30 percent of all American homes. Thus, SPAM truly is a household name. [Hormel Food Corp. V. Jim Henson Prods. 73 F.3d 497 (2d Cir. 1996)]." [See page 2 of Applicant's Main Brief].

Thus, when Applicant made the argument in her Motion for Reconsideration that the use of the words "Movie" and "Vision" or "Movievision" are likened to the use of the commonly used term "Computer", a generic term for computer equipment, Appellant merely wanted to show and/or prove to this Board that it has been the ongoing trend for people to use common terms in order to better describe their product or type of service, etc. that they want to offer to the general public. And the general public should not be prevented from making use of these common terms to describe their services or products merely because a particular individual or entity has already registered their products or services using a common or generic terms. It is

Applicant's consistent position that no one (especially Opposer) should be given the exclusive right to the use of common terms (movie, vision, computer, etc) which are ordinarily use by people or individual since these terms are commonly used by people and/or entities in their everyday lives. If this Board gives Opposer the exclusive right to the use of the common terms "movie" or "vision" or "movievision", it would give the Opposer a great competitive advantage over others, as with Applicant in this case.

Opposer further contends that there is no evidence of record that support Applicant's argument that its product or service is not, and cannot be made available in an individual's vehicle. Again, this statement is false. It should be noted that at the very outset, when Applicant filed an intent-to-use application for the mark MOVIEVISION and Design, Applicant was very specific with the type or kind of service it was intending to promote namely: for services ultimately identified as "pay-per-view television transmission services featuring recently released movies in English, Spanish, Cantonese, and Russian via cable," in Class 38. [See Board's Opinion, page 1, mailed April 9, 2009]. In support of this application, Applicant testified that applicant intends to render its services through cable television providers to cable television subscribers. [See Board's Opinion, p. 10, mailed April 9, 2009; Retana Deposition, p. 20]. This clearly suggests that Applicant's services will be available only for home usage/consumption by cable television subscribers through their cable television providers. Meaning, if an individual does not have a cable or is not a cable television subscriber at his or her home, he or she will not be able to avail of Applicant's services. Therefore, since Applicant caters its services to cable television subscribers who has a cable subscription with a cable company at their homes, it is not available to any individual in his or her vehicle.

B. Applicant's Argument Regarding The Dissimilarity In Marks Is Not A Reargument of the Points Presented In Applicant's Main Brief. Rather, It Is a Clarification Of The Points Advanced By Applicant To Prove Further That Applicant's Mark and Opposer's Mark Are Dissimilar To One Another.

Opposer contends that Applicant attempts to raise again the issue of dissimilarity in marks. Applicant begs to differ with Opposer's contention. While it is the true that issue of dissimilarity in marks has already been raised, discussed and decided by this Board, Appellant merely attempts, in her Motion for Reconsideration, to prove to this Board that it erred in its previous finding that Applicant's mark and the Opposer's mark are purportedly "similar". In her Main Brief, Applicant failed and did not include the factors that were raised in the Seventh Circuit, which is the case of *McGraw-Edison v. Walt Disney Productions*, 787 F.2d 1163,1167-1168 (1986), in deciding whether there is similarity in marks. Instead of applying the factors raised in this case, *i.e.* the degree of similarity between the marks in appearance and suggestion; the similarity of the products for which the name is used, etc., Applicant merely stated that "an inquiry into the degree of similarity between two marks does not end with a comparison of the mark themselves..." Applicant did not apply the factors indicated in the case of *McGraw-Edison* in her discussion to show that her mark is dissimilar to Opposer's mark. Applicant believes that in showing the dissimilarity in the marks, she merely showed to this Board a "vague" dissimilarity and/or a limited comparison in the physical appearance of the marks. For this reason, Appellant now attempts through her Motion for Reconsideration to clarify this dissimilarity in marks by providing a more graphic comparison between Applicant's mark and

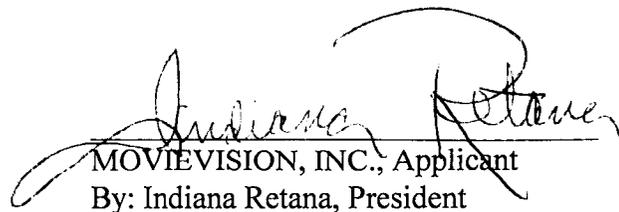
the Opposer's mark by showing to this Board that there is a huge and/or highly distinct difference in the "logo", "design", and "emblem" between Applicant's mark and Opposer's mark as well as the services that Applicant and Opposer attempts to cater to the general public. And these difference would not likely create confusion in the minds of consumer or general public when they avail of the services offered by either Applicant or Opposer.

CONCLUSION

Based on reasons previously cited in Applicant's Motion for Reconsideration, and the foregoing reasons, Applicant requests that this Board reconsiders its previous order denying Applicant's Application.

DATED: August 28, 2009

Respectfully Submitted:


MOVIEVISION, INC., Applicant
By: Indiana Retana, President

CERTIFICATE OF SERVICE

I certify that I served:

**APPLICANT'S REPLY TO OPPOSER'S RESPONSE TO APPLICANT
MOTION FOR RECONSIDERATION**

on August 28, 2009

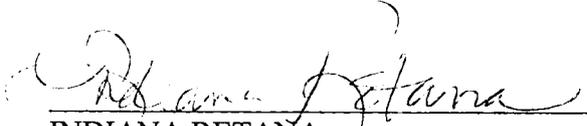
 delivering
 /
 mailing (via First Class mail)

a copy to:

Kevin J. Heintz
Matthew Mowers
Hope v. Shovein
1000 Town Center
Twenty-Second Floor
Southfield, Michigan 48075

Attorneys for Opposer, Magnadyne Corporation

Dated: August 28, 2009


INDIANA RETANA
9435 Charleville Boulevard
Beverly Hills, CA 90212