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

Proceeding	91176744
Party	Plaintiff DC Comics and Marvel Characters, Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Applicant: Michael Craig Silver
Application Ser. No.: 78/823,155
Filing Date: 2/24/06
Mark: SUPER HERO
Date of Publication in OG: 1/16/07
Opposer: DC Comics and Marvel Characters, Inc.

DC COMICS and
MARVEL CHARACTERS, INC.,

Opposer,

vs.

MICHAEL CRAIG SILVER,

Applicant.

Opposition No. 91/176,744

OPPOSER'S MOTION FOR SUSPENSION

Opposer moves to suspend the Board's consideration of Opposer's summary judgment motion pending Opposer's submission of status copies of several registrations in support thereof. *See* 37 C.F.R. § 2.117(c).

Opposer relies upon Registration Nos. 825,835 (SUPER HERO); 1,140,452 (SUPER HEROES); 1,179,067 (SUPER HEROES); 2,936,470 (KRYPTONITE); 3,250,362 (X-MEN); and 3,022,405 (SUPERHERO). All but Registration Nos. 3,250,362 (X-MEN) and 3,022,405

(SUPERHERO) were specified in Opposer's Notice of Opposition. Moreover, in Opposer's summary judgment briefs, Opposer has submitted two copies of each of the above registrations along with a print-out of the Trademark Electronic Search System ("TESS") to indicate the current active status of each registration. *See* Exhibits 1, 2, 3, 12, 17 (Opposer's Motion for Summary Judgment), and 24 (Opposer's Reply); *see* Trademark Trial and Appeal Board Manual of Procedure ("TBMP") § 528.05(a); 37 C.F.R. §§ 2.122(b) and 2.122(d)(1).

Opposer understands that § 2.122(d)(1) was amended on August 1, 2007 to allow a registration to be received into evidence by submitting "a current printout of information from the electronic database records of the USPTO showing the current status and title of the registration." Furthermore, before filing Opposer's summary judgment motion, Opposer's counsel requested clarification on the procedure for submitting registrations from the interlocutory attorney (TBMP § 105), who advised Opposer's counsel by telephone on September 21, 2007 that copies of registrations along with a TESS copy of status would be sufficient.

However, out of an abundance of caution, Opposer wishes to submit copies of registrations showing their status and title pursuant to 37 C.F.R. § 2.6(b)(4), and therefore requests that the Board suspend disposition of Opposer's summary judgment motion pending receipt of such submission. Opposer has ordered such copies, on an expedited basis, from the United States Patent & Trademark Office.

To the extent that status copies are still necessary for Opposer's above registrations to be received into evidence, Opposer believes it has shown good cause for this motion, because it had a good faith belief that no further submission was necessary based upon Opposer's counsel's

telephone conversation with the interlocutory attorney.² Moreover, Applicant will not suffer prejudice from the granting of this motion: Applicant did not lodge any evidentiary objection to Opposer's registrations in Applicant's response, and Opposer is not seeking to introduce any evidence not already presented in its briefs, but merely to clarify a formality. Finally, there is no schedule for the close of briefing in Opposer's summary judgment motion: as noted in Opposer's reply brief, Applicant has never served Opposer with Applicant's brief.

KENYON & KENYON LLP

Dated: December 14, 2007

By:



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² Should the Board deem such status copies not to be necessary, then it can simply deny this motion as moot.

PROOF OF SERVICE

I hereby certify that a true and complete copy of OPPOSER'S MOTION FOR
SUSPENSION has been served by mailing said copy on December 14, 2007, via first-class mail,
to:

Michael Craig Silver
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A handwritten signature in black ink, appearing to read "Michael V. Silver", is written over a horizontal line.