

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

Baxley

Mailed: December 19, 2007

Opposition No. **91176744**

DC Comics and Marvel
Characters, Inc.

v.

Michael Craig Silver

Andrew P. Baxley, Interlocutory Attorney:

In the reply brief that opposers filed on December 14, 2007 in support of their motion for summary judgment, opposers request an oral argument in connection with that motion. It is the practice of the Board to deny a request for an oral hearing on a motion unless, in the opinion of the Board, an oral hearing is necessary to clarify the issue or issues to be decided. Ordinarily, arguments on a motion are, and should be, adequately presented in the briefs thereon. Therefore, the Board rarely grants a request for an oral hearing on a motion. TBMP Section 502.03 (2d ed. rev. 2004).

The Board finds that an oral argument in connection with the motion for summary judgment is unnecessary because that motion can be adequately decided on the basis of the briefs of record and evidence in support thereof.

Opposition No. 91176744

Accordingly, the request for an oral argument in connection therewith is denied.

Concurrently, opposers filed a motion to suspend this proceeding to this proceeding so that opposers can obtain and file with the Board status and title copies of certain of its registrations upon which it relies in support of its motion for summary judgment. Although applicant's time to respond to that motion has not expired, the Board, in its discretion, elects to decide the motion at this time.

Inasmuch as opposers have already filed a brief and a reply brief in support of its motion for summary judgment, opposer is prohibited from filing any further submissions in support of its motion for summary judgment. See Trademark Rule 2.127(a). Further, the most recent of the registrations in question was issued more than four months prior to the filing of opposers' motion for summary judgment. Accordingly, the Board finds that the status and title copies of the registrations could have been made of record through the exercise of reasonable diligence in the briefs that opposers filed in support of its motion.¹ See TBMP Section 509.01(b)(2) (2d ed. rev. 2004).

¹ The Board notes that the telephone conversation between opposers' attorney and a Board interlocutory attorney, upon which opposers rely in support of the motion to suspend, purportedly took place on September 21, 2007, i.e., more than one month prior to the filing of the motion for summary judgment.

Opposition No. 91176744

Accordingly, the motion to suspend is denied. The Board will decide the motion for summary judgment in due course, based upon the record presently before it.

Further, the Board's decision herein is based exclusively on the written record. As such, no attention will be paid to any such telephone conversation. See Trademark Rule 2.191.