

THIS OPINION IS NOT
A PRECEDENT OF
THE T.T.A.B.

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

WINTER

Mailed: November 30, 2009

Opposition No. 91177807

7-Eleven, Inc.

v.

Susan B. Bucenell

Before Quinn, Holtzman, and Ritchie,
Administrative Trademark Judges.

By the Board:

This case now comes up for consideration of opposer's motion (filed June 24, 2009) for summary judgment on its claim of likelihood of confusion.¹

Summary judgment is an appropriate method of disposing of cases in which there are no genuine issues of material fact in dispute, thus leaving the case to be resolved as a matter of law. See Fed. R. Civ. P. 56(c). A party moving for summary judgment has the burden of demonstrating the absence of any genuine issue of material fact, and that it is entitled to judgment as a matter of law. See *Celotex*

¹ Opposer did not seek summary judgment on the pleaded ground of dilution.

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Corp. v. Catrett, 477 U.S. 317 (1986). Additionally, the evidence must be viewed in a light favorable to the non-movant, and all justifiable inferences are to be drawn in the non-movant's favor. See *Opryland USA, Inc. v. Great American Music Show, Inc.*, 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1993). Further, the Board may only ascertain whether issues of material fact are present, and may not resolve factual issues against the non-moving party.

Lloyd's Food Products Inc. v. Eli's Inc., 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993); and *Opryland USA, supra*.

Based on our careful consideration of the evidence and arguments submitted by the parties and drawing all inferences in favor of applicant as the non-movant, we find that, at a minimum, there is a genuine issue of material fact as to the relatedness of the parties' goods.² In view thereof, opposer's motion for summary judgment is denied.³

This proceeding is resumed. Trial dates are reset as follows:

² Although we have mentioned only one genuine issue of material fact in this decision, that is not to say that this is the only issue of material fact in dispute.

³ The parties should note that evidence submitted in support of or in opposition to a motion for summary judgment is of record only for consideration of that motion. Any such evidence to be considered at final hearing must be properly introduced in evidence during the appropriate trial period. See, e.g., *Levi Strauss & Co. v. R. Joseph Sportswear Inc.*, 28 USPQ2d 1464 (TTAB 1993). See TBMP § 528.05(a) (2d ed. rev. 2004).

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DISCOVERY PERIOD TO CLOSE:	CLOSED
Thirty-day testimony period for party in position of plaintiff to close:	February 2, 2010
Thirty-day testimony period for party in position of defendant to close:	April 3, 2010
Fifteen-day rebuttal testimony period to close:	May 18, 2010

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. See Trademark Rule 2.125, 37 C.F.R. § 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b), 37 C.F.R. §§ 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129, 37 C.F.R. § 2.129.
