

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

Mailed: December 20, 2010

Opposition No. 91182064

AS Holdings, Inc.

v.

H & C Milcor, Inc., f/k/a
Aquatico of Texas, Inc.

George C. Pologeorgis, Interlocutory Attorney:

This case now comes up for consideration of opposer's motion (filed December 9, 2009) to strike applicant's Exhibits 16-22 and all testimony related to Exhibits 16-22, including without limitation the related testimony of Sean Steimle and Lawrence Devitt. The motion is fully briefed.

The Board, in its discretion, suggested that the issues raised in opposer's motion should be resolved by telephonic conference as permitted by TBMP § 502.06 (2nd ed. rev. 2004). The Board contacted the parties to discuss the date and time for holding the phone conference.

The Board initially held a telephone conference with the parties regarding opposer's motion to strike on April 29, 2010. During that conference, opposer withdrew its

objections to Exhibits 17, 19, and 22 and any testimony related thereto. Accordingly, opposer's motion to strike has been given no further consideration with regard to applicant's Exhibits 17, 19, and 22 and any testimony in relation thereto. The Board, however, could not make a final disposition regarding the objections to the remaining exhibits and related testimony and required the parties to submit supplemental information and papers. The parties provided the requested supplementation of documents.

The Board conducted a follow-up telephone conference at 11 a.m. Eastern time on Monday, December 20, 2010. The conference was held as scheduled among Terence J. Linn, as counsel for opposer, Dillis V. Allen, as counsel for applicant, and the above signed, as a Board attorney responsible for resolving interlocutory disputes in this case.

The Board carefully considered the arguments raised by the parties, as well as the supporting correspondence and the record of this case, in coming to a determination regarding the above matters. During the telephone conference, the Board made the following findings and determinations:

Opposer's Motion to Strike

Exhibit 16

Opposer's motion to strike is granted with regard to applicant's Exhibit 16. Exhibit 16 and any testimony made in relation thereto are stricken from the record.

Exhibit 18

Opposer's motion to strike is denied with regard to applicant's Exhibit 18. Exhibit 18 and any testimony in relation thereto remains part of the record.

Exhibit 20

Opposer's motion to strike is granted to the extent that Appendix Nos. 23 and 25 of applicant's Exhibit 20, as well as any testimony in relation to Appendix Nos. 23 and 25, to the extent there is any, are stricken from the record.

Exhibit 21

Opposer's motion to strike is granted to the extent that Appendix Nos. 26 and 33-36 of applicant's Exhibit 21, as well as any testimony in relation to Appendix Nos. 26 and 33-26, to the extent there is any, are stricken from the record.

During the course of the December 20, 2010 telephone conference, opposer's counsel advised that opposer would not pursue rebuttal testimony. Accordingly, proceedings herein

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are resumed and the case will proceed to final briefing upon the schedule set forth below:

Opposer's brief due: **February 25, 2011**

Applicant's brief due: **March 28, 2011**

Opposer's reply brief, if filed, due: **April 12, 2011**

An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.¹

¹ As a reminder, 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 taking of testimony. Trademark Rule 2.125. Moreover, all trial testimony depositions that are taken in a Board *inter partes* proceeding must be filed with the Board, and, when filed, automatically constitute part of the evidentiary record in the proceeding. The Board will accept transcripts of testimony depositions at any time prior to the submission of the case for final decision.