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

Proceeding	91184319
Party	Defendant Chicago Tribune Company
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Submission	Motion to Amend/Amended Answer or Counterclaim
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Date	10/22/2008
Attachments	REDEYE 9.pdf (48 pages)(1614983 bytes)

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

In the Matter of Application)	
Serial No. 77101706 for the Mark REDEYE I)	
(& Design) in International Class 041 for)	
“Providing information on news in the nature)	
of current events reporting, on leisure in the)	
nature of cultural events, music, theater, sports)	
and restaurants; on fine and performing arts; and)	
on entertainment concerning the motion picture)	
industry, the television industry and sports,)	
by means of a global computer network;)	
production of cable television segments featuring)	
news, leisure, arts and entertainment”)	
Filing Date: February 7, 2007)	
Publication Date: January 29, 2008)	
)	
FOX NEWS NETWORK, LLC.)	Opposition No. 91184319
)	
Opposer,)	
)	
v.)	
)	
CHICAGO TRIBUNE COMPANY,)	
)	
Applicant.)	

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

**CHICAGO TRIBUNE COMPANY'S RESPONSE IN OPPOSITION
TO FOX NEWS NETWORK, LLC'S MOTION TO AMEND PLEADING**

Introduction

Opposer Fox News Network, LLC is attempting to leverage a fraud claim out of what is, at most, a legal dispute—not a misstatement of material fact. Opposer makes a very serious claim—that Applicant Chicago Tribune Company committed fraud on the United States Patent and Trademark Office in seeking registrations for the mark

REDEYE I (& Design) (hereinafter “REDEYE”). Opposer relies on a constricted legal interpretation of the phrase “use in commerce” as a basis for claiming that Tribune engaged in fraud. Opposer tried this gambit already when it filed and then quickly dropped a plainly deficient Notice of Opposition. Now, Opposer returns seeking leave to file a similarly meritless Amended Notice of Opposition.

Although Opposer’s Amended Notice of Opposition is longer than the first opposition, the allegations in the Amended Notice still do not carry Opposer over the high threshold of showing that literally true statements are somehow fraudulent. Opposer does not dispute that Tribune used the mark REDEYE in conjunction with providing information over the Internet and Opposer admits that Tribune used REDEYE in connection with cable television segments; Opposer does not claim that Tribune submitted fraudulent specimens of use; Opposer admits that Tribune used REDEYE in connection with providing information on the Internet prior to filing its trademark application. Instead, Opposer’s sole cognizable basis for claiming fraud is an argument that Tribune’s claimed use was not a “use in commerce.” Even if Opposer were right (and it is not) that legal dispute provides no basis for a fraud claim, particularly when the Board is vigilant in ferreting out baseless fraud claims. Regardless, Opposer is simply wrong as a matter of law. Opposer freely admits in its allegations that Tribune used the REDEYE mark, and, as a matter of law, that use was a use in commerce. Moreover, with regard to the Internet registration of REDEYE, Opposer’s admissions render any alleged fraud immaterial and, therefore, irrelevant. Opposer has not pled and cannot plead a cognizable fraud claim, and Tribune respectfully requests that the Board deny Opposer’s Motion for Leave to Amend on the grounds of futility.

Background

This is the second Notice of Opposition Opposer has filed. Opposer filed its initial Notice of Opposition on May 27, 2008. On August 5, 2008 Tribune filed a Motion to Dismiss the Notice on the ground that Opposer failed to plead fraud with particularity. Rather than respond to the motion, Opposer conceded the point and simply sought leave to file an Amended Notice of Opposition.

In its Amended Notice of Opposition, Opposer added a great deal of irrelevant detail but nothing of consequence. Opposer claims that Tribune committed fraud when it sought to register REDEYE in International Class 41 for:

Providing information on news in the nature of current events reporting, on leisure in the nature of cultural events, music, theater, sports and restaurants; on fine and performing arts; and on entertainment concerning the motion picture industry, the television industry and sports, by means of a global computer network; production of cable television segments featuring news, leisure, arts and entertainment.

Opposer alleges that Tribune engaged in fraud because, although it used the mark in the manner set forth in the description of goods and services, it did not do so “in commerce.”

Argument

I. A Motion for Leave to Amend May be Denied Where, as Here, Amendment would be Futile.

Opposer quickly jettisoned its first Notice of Opposition when Tribune pointed out the glaring deficiencies in that pleading. Now, Opposer seeks to file an amended Notice. Under Fed. R. Civ. P. 15(a), the decision to allow amendment is within the discretion of the Board and shall be granted only “when justice so requires.” *See Trek Bicycle Corp. v. StyleTrek Ltd.*, 64 U.S.P.Q.2d 1540, 2001 TTAB LEXIS 841, at **3-4 (T.T.A.B. 2001)

(denying motion for leave to amend opposition). A motion for leave to amend may be denied for “undue delay, undue prejudice, bad faith, or futility of the amendment.” *Dow Corning Corp. v. Chemical Design*, 3 F. Supp. 2d 361, 364 (W.D.N.Y. 1998). Granting leave to amend in this situation is, at minimum, futile. *See Leatherwood Scopes Int’l, Inc. v. Leatherwood*, 63 U.S.P.Q.2d 1699, 1702 (T.T.A.B. 2002) (denying opposer’s motion to amend notice of opposition because “the new claims opposer seeks to add by way of the proposed amended notice of opposition are legally insufficient, and allowing the proposed amendment thereto would be futile”); *Trek Bicycle*, 2001 TTAB LEXIS at **6-7 (noting that “[w]here the moving party seeks to add a new claim or defense, and the proposed pleading thereof is legally insufficient, the Board normally will deny the motion for leave to amend”). Nothing in Opposer’s pleading makes it more cognizable than its first, doomed opposition.

II. Opposer Attempts to Bring a Type of Claim the PTO Rightfully Disfavors and for Which It Sets a High Burden of Pleading and Proof.

In attempting to plead a fraud claim in an opposition, Opposer swims against a tide of precedent in which such claims are discouraged and high standards are set. For example, as Tribune pointed out in its Motion to Dismiss the initial Notice of Opposition, the opposing party must plead fraud with particularity under Fed. R. Civ. P. 9(b). Opposer immediately acquiesced and now seeks to file a new Opposition.

The fact remains, however, that fraud is a disfavored claim. *See* 6 J. Thomas McCarthy, MCCARTHY ON TRADEMARK AND UNFAIR COMPETITION § 31:68, at 31-151 to 152 (4th ed. 2008). As the Board has noted: “A party making a fraud claim is under a heavy burden because fraud must be proved by clear and convincing evidence, leaving nothing to speculation, conjecture, or surmise. Any doubt must be resolved against the

party making the claim.” *University Games Corp. v. 20Q.net, Inc.*, 87 U.S.P.Q.2d 1465, 2008 TTAB LEXIS 25, at *5 (T.T.A.B. 2008). Indeed, the very nature of a fraud claim requires that it be proven “to the hilt.” *Smith Int’l Inc. v. Olin Corp.*, 209 U.S.P.Q. 1033, 1044 (T.T.A.B. 1981). In fact, in cases where the Board has found fraud “it is generally crystal clear that [a] statement in question is false”—usually with the application or registrant effectively admitting that it has made a false statement. *American Flange & Mfg. Co., Inc. v. Rieke Corp.*, 80 U.S.P.Q. 2d 1397, 2006 TTAB LEXIS 195, at *69 (T.T.A.B. 2006).

III. Fraud Requires a False Statement of Material Fact, Which Opposer Does Not and Cannot Allege.

In order to plead a fraud claim, Opposer must plead that applicant knowingly made “false, material representations of fact” in its application. *University Games*, 2008 TTAB LEXIS at *4. In an attempt to cure its initial pleading deficiencies, Opposer pleads a longer, more detailed Notice of Opposition, but Opposer still cannot successfully identify a false statement of material fact. Opposer does not dispute that Tribune has been using REDEYE on the Internet since prior to 2006. (Am. Not. of Opp. ¶ 2 (acknowledging existence of www.redeyechicago.com but contending that site existed “solely to promote the REDEYE newspaper”).) Opposer acknowledges that Tribune has been using REDEYE in connection with cable television segments since at least 2002. (*Id.* ¶ 25.) Tribune submitted specimens of use with its application, and neither Opposer nor the Examiner challenge the validity of those specimens. Opposer does not dispute that Tribune uses REDEYE in connection with “providing information on news in the nature of current events reporting” on cable television and the Internet. Instead, Opposer rests its allegations solely on the argument that Tribune’s use was not a use in commerce “within

the meaning of the Trademark Act, 15 U.S.C. §§ 1051 and 1127.” (*Id.* ¶¶ 1, 2; *see also* ¶¶ 20, 31, 42.) That is a legal argument, but it does not amount to fraud.

As McCarthy has recognized, fraud claims are particularly difficult to bring when the applicant has used the mark (as is the case here), but an opposer claims the use was not in commerce. 6 MCCARTHY ON TRADEMARK AND UNFAIR COMPETITION § 31:72, at 31-157 (“[I]f there is some use, because the nature of use sufficient to form a predicate for an application is so cloudy, a good faith belief of sufficient use is enough to rebut a charge of fraud.”); *see also Maids to Order of Ohio, Inc. v. Maid-to-Order, Inc.*, 78 U.S.P.Q.2d 1899, 2006 TTAB LEXIS 106, at **15-25 (T.T.A.B. 2006) (finding no fraud where parties disagreed over meaning and application of use in interstate commerce provision).

IV. Opposer is Wrong, as a Matter of Law, when It Pleads Fraud by Contesting Tribune’s Use of REDEYE in Connection with the Provision of Information over the Internet.

Even if taken at face value, Opposer’s claims of fraud regarding Applicant’s use of REDEYE on the Internet are not cognizable as a matter of law. Opposer argues in the Amended Notice of Opposition that Applicant’s first use date of “at least as early as October 30, 2002” for use on the Internet is fraudulent because this date was not a “use in commerce.” (Am. Not. of Opp. ¶ 42.) However, Opposer readily admits in the Amended Notice of Opposition that in July 2006, Applicant was using REDEYE *in commerce* on the Internet. (*See, e.g.*, Am. Not. of Opp. ¶¶ 2 (Instead, *until July 2006*, Tribune operated the Internet website www.redeyechicago.com solely to promote the REDEYE newspaper.” (emphasis supplied)) & 41 (citing Jane Hirt’s statement that “in ’06, summer of ’06 we redesigned [the REDEYE Web site] to add a lot more editorial things for people to read and click on.”).) Moreover, it is undisputed that Tribune filed its use-based

application for REDEYE in connection with its use on the Internet on February 7, 2007—well after June 2006.¹ (Am. Not. of Opp. ¶ 11.) Although Opposer quibbles with Applicant’s first use date of “at least as early as October 30, 2002,” Opposer’s pleading admits that Tribune used REDEYE in commerce well before Applicant’s application filing date in February 2007. Accordingly, as a matter of law, in this scenario, even if Tribune misstated the October 2002 first-use date (which it did not), such misstatement is not fraud.

The Board has consistently held that “a misstatement of the date of first use in a use-based application is *not* fraudulent as long as there has been some valid use of the mark prior to the filing date.” 6 J. Thomas McCarthy, MCCARTHY ON TRADEMARK AND UNFAIR COMPETITION § 31:74, at 31-163 (4th ed. 2008) (emphasis supplied) (listing cases holding that misstatement of first-use date is not fraud); *see also Western Worldwide Enters. Group, Inc. v. Qinqdao Brewery*, 17 U.S.P.Q.2d 1137 (T.T.A.B. 1990). As McCarthy notes, this is because the exact date of a claimed first use “is immaterial to the grant of a registration, just so long as the first use in fact preceded the filing date of a use-based application.” MCCARTHY ON TRADEMARK AND UNFAIR COMPETITION § 31:74, at 31-163. Opposer makes the same long-rejected argument that stating an erroneous first use date is fraud. Indeed, McCarthy notes that the exact argument that Opposer makes in its Amended Notice of Opposition “seems always to have failed.” *Id.* at 31-162. Under the facts pled in Opposer’s Amended Notice of Opposition, Opposer’s theory of fraud due to a misstatement of a first-use date fails as a matter of law and is, therefore, futile.

¹ Opposer also admits in its Amended Notice of Opposition that it did not launch its late night television program using the term “Red Eye” until “2 a.m. E.S.T. on February 6, 2007”—well after June 2006. (*Id.* at ¶ 9.)

Although Opposer’s theory is fundamentally flawed, Opposer is also wrong when it asserts that Applicant did not use the mark REDEYE on the Internet in commerce “at least as early as October 30, 2002.” Opposer selectively quotes the deposition of Brad Moore, the general manager of REDEYE, in its Amended Notice of Opposition, (Am. Not. of Opp. ¶ 39), and then leaps to the unsupported and untrue conclusion that Tribune’s use of REDEYE on the Internet prior to July 2006 was “*solely* to promote the newspaper.” (*Id.* at ¶ 46 (emphasis supplied).) This is not true, however. As Mr. Moore’s full deposition testimony clearly evidences, even if the “primary” motivation behind use of the REDEYE on the Internet in October 2002 may have been as an “informational site for the newspaper,” (Moore Dep. Excerpts attached as Ex. A at 40)², it was not the *sole* motivation or purpose. Indeed, Tribune’s use of the mark REDEYE on the Internet in October 2002 occurred with actual editorial articles and columns that provided users of the Web site with information over the Internet—this *is* use in commerce. (*See* Ex. A at 41.)

Mr. Moore clearly stated in his deposition that the REDEYE Web site contained: (i) “the front cover story,” (ii) “the image of the front cover [of the REDEYE newspaper],” and (iii) “columns from some columnists that were in the newspaper.” (*Id.*) Indeed, Opposer’s counsel actually asked Mr. Moore to clarify this issue:

² Mr. Moore’s deposition (as well as Ms. Hirt’s deposition) are integral to the Amended Notice of Opposition—they provide the basis for Opposer’s attempt to claim *scienter*. (Am. Not. of Opp. ¶¶ 30, 33, 39, 45) Where a document is a pertinent part of a pleading, federal courts have held that “the defendant may introduce the document as an exhibit to a motion attacking the sufficiency of the pleading; that certainly will be true if the plaintiff has referred to the item in the complaint and it is central to the affirmative case.” 5A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* §1327. Accordingly, excerpts from Mr. Moore and Ms. Hirt’s depositions are attached hereto.

[Opposer's Counsel:] So, I'm sorry, but it [the Web site] had the copy of the cover *and also the actual cover story in it?*

[Mr. Moore:] Correct.

[Opposer's Counsel:] And the – it [the Web site] had some columns, *the actual written columns in there?*

[Mr. Moore:] Yes.

(*Id.*) Regardless of whether there may have been an additional purpose for the use of REDEYE on the Internet in October 2002, Tribune's use of the REDEYE mark in connection with editorial content—articles, columns, and cover shots—is clearly “use in commerce.”³ Accordingly, Opposer's arguments in its Amended Notice of Opposition are proven wrong by the actual facts incorporated by reference in that same pleading. Tribune's statement that it used REDEYE on the Internet in October 2002 is not false and does not constitute fraud.

V. Opposer is Wrong, as a Matter of Law, in Arguing that Tribune's Cable Television Use of REDEYE is not a “Use in Commerce.”

As a predicate matter, Opposer freely and repeatedly admits that Tribune used REDEYE on cable television. (Am. Not. of Opp. ¶¶ 1, 3, 20, 23, 25-27, 30, 34, and 35.) Opposer merely questions whether such use on cable television is a “use in commerce,” which it undeniably is.

First, even if Opposer is correct regarding Tribune's use of REDEYE on cable television, the Lanham Act specifically recognizes exactly that sort of activity as a “use in commerce” for a service mark. Under 15 U.S.C. §1127, “[t]itles, character names, and other distinctive features of radio or television programs may be registered as service

³ As discussed below, companies attain registrations for marks in connection with goods or services that may have as a primary purpose the promotion of another product or service.

marks notwithstanding that they, or the programs, may advertise the goods of the sponsor.” That, in a nutshell, is what Opposer alleges Tribune used REDEYE for—to advertise the newspaper. Therefore, even if Opposer is correct, REDEYE may be registered as a service mark based on the CLTV segments.

Opposer attempts to argue that Tribune used REDEYE on cable television only to promote the newspaper. (Am. Not. of Opp. ¶¶ 1, 3, 20, 30, 33-35.) In doing so, Opposer cherry-picks a quotation from the deposition of former REDEYE editor Jane Hirt that the REDEYE segment on CLTV “just extends our brand to more viewers, which would presumably hopefully get them to pick up the paper and sign in to our website.” (Am. Not. of Opp. ¶¶ 30, 34.) Ms. Hirt by no means stated that was the only purpose of the CLTV segment. Elsewhere in her deposition, Ms. Hirt also noted that the CLTV segment served to “extend our brand into yet another – onto yet another platform that we think our audience will see.” (Hirt Dep. 44:12-14, excerpts attached as Ex. B.) Indisputably, Tribune used the REDEYE cable television segments in the course of “[p]roviding information on news in the nature of current events reporting.” Ms. Hirt noted that the REDEYE segment on CLTV included discussion of the “talkable news stories of the day.” (Hirt Dep. 44:20-21.) Even if the segments promoted REDEYE, the newspaper, the segments also disseminated news, which is what media companies do.

Just because one purpose of a mark, among others, may be to promote a related good or service, applicant is nonetheless using the mark in commerce. The Coca-Cola Company provides a good example of the many different types of registrations a mark holder can receive for marks that may also have as their primary purpose the promotion of something else. Although Coca-Cola is primarily in the business of carbonated soft

drinks, it also holds registrations for other products primarily promoting the COCA-COLA mark like t-shirts and hats and even such seemingly random products as snow sleds, shoe scrapers, thimbles, and cummerbunds.⁴ (Copies of the registrations are attached as Group Ex. C.) Obviously, Coca-Cola is not primarily in the business of selling t-shirts, hats, sleds, shoe scrapers, thimbles, or cummerbunds. These products primarily promote Coca-Cola, but the marks were nonetheless registrable.⁵ Extending a media brand and content into another medium as Tribune has done with REDEYE is a use in commerce.

Finally, Opposer latches on to the word “segment” in a futile attempt to show that Tribune was not using REDEYE on cable television. Opposer admits that Tribune used REDEYE on cable television, but, in an extraordinary exercise of hair-splitting, claims the shows were not “segments.” (Am. Not. of Opp. ¶ 21.) The allegation is so baseless and internally contradictory it is not cognizable. Opposer attempts to support this claim by noting that “[n]o such program is listed in any television guide” as if television guide listing were the *sine qua non* of existence as a television segment. This is ridiculous because portions or segments of a cable show are not listed in television guides. Indeed, Opposer’s own pleading also uses the word “segment” in describing the REDEYE production and states that: “a general assignment reporter for the REDEYE newspaper named Kyra Kyles (‘Kyles’) sometimes appeared on the CLTV Evening Edition for a *segment* designed to promote next day’s issue of

⁴ The Board may take judicial notice of a trademark registration, *Duluth News-Tribune v. Mesabi Publ’g Co.*, 84 F.3d 1093, 1096 n.2 (8th Cir. 1996), and Tribune hereby respectfully requests that the Board do so.

⁵ Cable News Network has registered CNN marks for, among other things, decorative refrigerator magnets, paperweights, and plastic key chains. (Copies of registrations are attached as Group Ex. D.) The list of registrations for primarily promotional products could go on and on.

REDEYE. At the end of each *segment . . .*” (Am. Not. of Opp. ¶¶ 26, 27 (emphasis added).)⁶ Tribune’s usage is in connection with a “segment,” and apparently Opposer agrees.

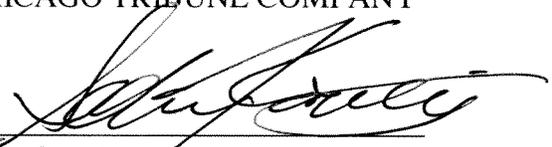
Conclusion

For the reasons set forth herein, Tribune respectfully requests that the Trademark Trial and Appeal Board deny Opposer’s Motion for Leave to File an Amended Notice of Opposition.

DATED: October 22, 2008

Respectfully submitted,

CHICAGO TRIBUNE COMPANY

By 
One of Its Attorneys

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⁶ Opposer’s counsel referred to REDEYE on CLTV as a “segment” six times during the deposition of Jane Hirt. (See Hirt Dep. 17:7; 44:9; 45:7; 80:15; 80:19; 80:23.)

CERTIFICATE OF SERVICE

I, Salvador K. Karottki, an attorney, hereby certify that I caused **Chicago Tribune Company's Response to Fox News Network, LLC's Motion to Amend Pleading (Opposition No. 91184319)** to be served upon:

Timothy J. Lyden
Hogan & Hartson L.L.P.
8300 Greensboro Drive, Suite 1100
McLean, VA 22102

By causing a copy of same to be sent via U.S. Mail, postage pre-paid, on October 22, 2008.



Salvador K. Karottki

EXHIBIT A

1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION

4 CHICAGO TRIBUNE COMPANY,)
5 an Illinois corporation,)
6 Plaintiff,)

7 -vs-) Case No.

8 FOX NEWS NETWORK LLC, a) 07 C 0865
9 Delaware limited liability,)
10 d/b/a FOX NEWS CHANNEL,)
11 Defendant.)

12
13 CONFIDENTIAL

14
15 30 (b) (6) DEPOSITION OF CHICAGO TRIBUNE COMPANY

16 As Given By

17 BRAD M. MOORE

18
19 February 21, 2007
20
21
22
23
24

1 that will be his focus.

2 MR. KRAUS: Just tell him what you know.

3 BY THE WITNESS:

4 A. From what I know he will not -- I'm not
5 aware that he will be testifying to the
6 similarities of the mark.

7 MR. KRAUS: We don't have an opinion from him
8 yet, Don.

9 MR. TARKINGTON: Okay.

10 MR. KRAUS: So, on the record I will say we --
11 we are not limiting what he is going to testify to.
12 That's something that our corporate representative
13 doesn't know because we don't know it.

14 MR. TARKINGTON: Okay.

15 BY MR. TARKINGTON:

16 Q. Would you please describe for me the
17 product or products that the RedEye trademark
18 applies to, both the word and the graphic?

19 A. It applies to a media source that
20 provides a concise authentic take on news. That's
21 taken the form of a newspaper, of a website and a
22 form in our TV segment on CLTV.

23 Q. Okay. The form of the newspaper I take
24 is the RedEye newspaper that we just saw a few

1 minutes ago as Exhibit No. --

2 A. I think it was 3.

3 Q. -- 3. Is that right?

4 A. Um-hmm.

5 Q. That's where you have to say yes or no.

6 A. Yes, that's the electronic copy of the
7 newspaper that I'm referring to.

8 Q. And then you say it's used in the TV
9 form. In what form is that?

10 A. We have a segment on the CLTV Evening
11 Edition where one of our columnists appears to
12 discuss the topics of the day, the hot news topics
13 of the day, and what will be appearing in the next
14 day's RedEye newspaper.

15 Q. Okay. Now, other than the -- the
16 segment on the CLTV Evening Edition, is this -- is
17 the RedEye mark used in TV any other way?

18 A. I'm aware of it being used with a --
19 with our WGN Morning News. Larry Potash who
20 anchors the morning news here in Chicago writes a
21 column for RedEye every Friday. On most Friday
22 mornings he talks about that column on air and from
23 what I know, he mentions the name RedEye and a
24 graphic form of RedEye appears on the screen.

1 Q. Okay. What do you mean by from what you
2 know?

3 A. I haven't watched the show recently, but
4 what I have seen in the past Larry mentions the
5 word RedEye by name and our graphic appears on the
6 screen.

7 Q. When was the last time you saw that
8 show?

9 A. Probably more than a year ago.

10 Q. Other than the fact that you saw this on
11 the show, do you have any other basis for saying
12 that WGN uses the RedEye graphic or the RedEye
13 trademark?

14 A. I was informed by our editor that
15 that -- the graphic and the name are still being
16 used by Larry.

17 Q. Okay. And who is that editor?

18 A. Jane Hirt.

19 Q. When you say your, you mean the RedEye
20 editor?

21 A. That's correct.

22 Q. And how does Jane Hirt know that, do you
23 know?

24 A. I think I'd prefer to have her tell you

1 that this afternoon.

2 Q. But did she tell you how she knows?

3 A. From what I understand, I believe she
4 had a conversation with somebody at WGN.

5 Q. Okay. Then other than that use of the
6 RedEye trademark and the one on the CLTV Evening
7 Edition, is there any other use of the RedEye
8 trademark that you're aware of on TV?

9 A. No.

10 Q. And you mentioned a website. Is this
11 the RedEye -- RedEye newspaper website you're
12 talking about?

13 A. It's the website for our brand RedEye.
14 For our media brand RedEye.

15 Q. What does that mean?

16 A. We publish a website that acts as
17 another platform for us to discuss and inform and
18 entertain our consumers on the news topics of the
19 day.

20 Q. And is that something that is under your
21 jurisdiction?

22 A. Yes.

23 Q. Now, is the purpose of this website to
24 drive people to read the magazine -- read the

1 newspaper?

2 A. That's one of the purposes but not the
3 only one. To provide another outlet for our brand
4 beyond the printed form.

5 Q. And do you sell advertising on that
6 website?

7 A. Yes, we do.

8 Q. Is the website a profitable part of your
9 business?

10 A. We haven't run that analysis yet.

11 Q. All right. And how long has this
12 website been in existence?

13 A. The website has been in existence from
14 the day we launched the newspaper.

15 Q. So, that was in October of '02?

16 A. Correct.

17 Q. And in October of '02 what form did the
18 website take? What was on the website at that
19 point in time?

20 A. At that time the website served as a
21 primary -- the primary purpose of the website at
22 that time was an informational site for the
23 newspaper.

24 Q. And what does that mean?

1 A. That means the site was primarily
2 focused on providing information about what the
3 newspaper was.

4 Q. Okay. So, it didn't have its own -- it
5 wasn't at that point used as another platform for
6 disseminating the news?

7 A. At that time that was not one of the
8 primary purposes of the site.

9 Q. Okay. At that time did the site have
10 anything in it other than information about the
11 RedEye newspaper?

12 A. Yes.

13 Q. What did it have on it?

14 A. It had the front cover story, the image
15 of the front cover, it had columns from some
16 columnists that were in the newspaper.

17 Q. Anything else it had on it?

18 A. Those are the primary pieces.

19 Q. So, I'm sorry, but it had the copy of
20 the cover and also the actual cover story in it?

21 A. Correct.

22 Q. And the -- it had some columns, the
23 actual written columns in there?

24 A. Yes.

1 Q. And then was that from the date it first
2 started in October of '02?

3 A. From what I can remember it was either
4 the same date or right around the same date.

5 Q. Okay. Now, other than -- I'm sorry.
6 But what is the address of that website?

7 A. I believe there is two addresses. The
8 one that we refer to most is redeyechicago.com.

9 Q. How come you don't use the redeye.com?

10 A. I believe that URL is owned by another
11 entity.

12 Q. Do you know where that URL is in use
13 today?

14 A. The specific entity I'm not -- I'm not
15 familiar with the business that they're in other
16 than they're not in the news media business.

17 Q. Now, the -- what's the other address for
18 this website, the redeyechicago.com website?

19 A. We don't use it very often. That's why
20 I'm not exactly clear.

21 Q. Okay.

22 A. I believe in the Complaint it's
23 redeye.chicagotribune.com.

24 Q. Okay.

1 A. But I'd ask you to verify that in the
2 Complaint.

3 Q. Other than this website which you just
4 identified by address, is there any other use of
5 the RedEye mark by the Tribune on the Internet?

6 A. Not that I'm aware of.

7 Q. Now, you testified that you haven't done
8 the analysis on whether this website is profitable.
9 Why is that?

10 A. We just launched the website in its
11 current form in July, in the form I described. We
12 just started selling advertising on the site in
13 December, from what I recall. So, we are in the
14 early forms of that business. And we have yet to
15 break out our financial results separately with
16 regard to our various platforms.

17 Q. And prior to July of -- I guess that's
18 July of 2006?

19 A. Right.

20 Q. So, prior to July of 2006 what form was
21 the website in?

22 A. In the form I described to you when we
23 started the website, in October.

24 Q. So, from October 2002 till July 2006 it

1 had the same form?

2 A. Relatively the same form, correct.

3 Q. Okay. When you say "relatively," why
4 are you qualifying it that way?

5 A. Well, from what I know, the website
6 didn't make significant changes from the day we
7 launched the newspaper till July of '06.

8 Q. Okay. So prior to July '06 the purpose
9 of this website, the primary purpose of the website
10 was to give information about the RedEye newspaper?

11 A. Primary, yes.

12 Q. Now, I take it you're not here to
13 testify about the CLTV use of this mark I take it?

14 A. Correct.

15 Q. And you don't have any involvement in
16 CLTV or the Evening Edition show?

17 A. I do not.

18 Q. Do you have any involvement in that
19 RedEye segment of the Evening Edition show?

20 A. Only to the extent one of my employees
21 and my brand is being used. I do not have
22 day-to-day involvement in the segment itself.

23 Q. Okay. Were you involved at all in the
24 decision to start having one of your employees

1 Q. And are these news videos?

2 A. From what I know, they'll be videos on a
3 number of different topics across news,
4 entertainment, pop culture.

5 Q. Now, I think you testified earlier that
6 one of the primary purposes of the website as it
7 exists today is to serve as an additional platform
8 for getting the news out.

9 Is that still going to be the primary
10 purpose, or is the purpose of the website changing?

11 A. The website is serving and will serve
12 many functions. One will be to be a primary outlet
13 for our brand for folks who do not read the
14 newspaper, and they will be able to be informed and
15 entertained on the various news topics of the day
16 by using the website alone.

17 The other form and function will be to
18 serve our existing print readers with an extension
19 to interact with us.

20 Q. So, explain to me -- I understand how
21 people are informed by the website. How are they
22 entertained by going to your website?

23 A. I can't speak for those folks and why
24 they would be entertained, but we will be providing

1 information and content that we hope they will be
2 entertained by, including videos, blogs, podcasts,
3 various forms of media that include and discuss and
4 cover the hot topics of the day.

5 Q. Okay. I understand that's what is going
6 to happen. I think you said one of the present
7 purposes of it is to entertain. How are people
8 presently entertained by going to the website?

9 A. Today on the site we offer videos and
10 blogs and podcasts and you could assume that the
11 folks that are using those tools are doing so for
12 either an informational purpose or for an
13 entertainment purpose.

14 Q. Okay. Now, what types of videos are on
15 the website today?

16 A. That would be good -- a better one to
17 ask Jane Hirt who is closest to the day-to-day
18 content that we have on our site.

19 Q. Okay. Is that because you don't have
20 any information about it?

21 A. It's because the content changes daily
22 and I'm not as close to the day-to-day changes that
23 we make.

24 Q. Okay. Just can you tell me generally

EXHIBIT B

1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION

4 CHICAGO TRIBUNE COMPANY,)
5 an Illinois corporation,)
6 Plaintiff,)

7 -vs-) Case No.

8 FOX NEWS NETWORK LLC, a) 07 C 0865
9 Delaware limited liability,)
10 d/b/a FOX NEWS CHANNEL,)
11 Defendant.)

12
13 CONFIDENTIAL

14
15 30(b)(6) DEPOSITION OF CHICAGO TRIBUNE COMPANY

16 As Given By

17 JANE HIRT

18
19 February 21, 2007
20
21
22
23
24

1 A. Primarily it's called Red Eye. It is a
2 similar take on the day's news and most talkable
3 topics with the same -- similar emphasis --
4 emphases, similar irreverence, similar snarkiness,
5 similar banter as RedEye the newspaper, RedEye on
6 the web and the RedEye show on CLTV.

7 Q. Is there a RedEye show on CLTV?

8 A. A segment, a show. I'm not in
9 broadcasting so I don't know the proper term.

10 Q. You are referring to the RedEye segment
11 on the evening news program on CLTV?

12 A. I am.

13 Q. So, I think you said it's called RedEye,
14 it has similar take on the news, similar
15 snarkiness, similar banter, similar irreverence,
16 and what else is there?

17 Do you want her to read back your
18 answer?

19 (WHEREUPON, the record was read
20 by the reporter as requested as
21 follows: A. Primarily it's called
22 Red Eye. It is a similar take on
23 the day's news and most talkable
24 topics with the same -- similar

1 other side of the screen?

2 A. Yes.

3 Q. And according to this, she's in Oak
4 Brook?

5 A. According to this, she's in Oak Brook.

6 Q. Okay. And Kyra is in the Chicago
7 Tribune newsroom?

8 A. Yes.

9 Q. Now, is the purpose of this segment to
10 promote your newspaper and the content of your
11 newspaper?

12 A. It's to extend our brand into yet
13 another -- onto yet another platform that we think
14 our audience will see.

15 Q. But there's nothing that Kyra talks
16 about at least generally, I think you said, other
17 than what's in the -- what's going to be in the
18 newspaper or what's been in the newspaper, is that
19 right?

20 A. Well, she talks about the talkable news
21 stories of the day, so they tend to be in the
22 newspaper the next day or have been.

23 Q. Okay. Now, I notice that behind Kyra is
24 this red -- the RedEye logo.

1 A. Yes.

2 Q. Has that always been part of the shot of
3 her on that show?

4 A. I don't recall back to the very
5 beginning, but every time I've seen it, I recall
6 seeing that there.

7 Q. Okay. And this segment is how long?
8 Two minutes?

9 A. I don't know for sure. I think it's
10 more like five to seven.

11 Q. Do you know if that RedEye logo that's
12 behind Kyra appears on the show any other time?

13 A. I don't know.

14 Q. I take it you're not here to testify
15 today about any future plans for the RedEye mark or
16 any future expansions of the RedEye mark.

17 A. I don't know. I could be. I don't know
18 what you mean.

19 Are you asking me or --

20 Q. Yeah. I'm asking you if you're here to
21 testify on that. I'm just trying to figure out
22 whether I need to ask you a series of questions or
23 not.

24 MR. TARKINGTON: Are you tendering --

1 In that case they might hold up the
2 paper or talk about something they read in RedEye,
3 and that also might be on the WGN Morning News.

4 Q. But that is something that other news
5 shows might do too?

6 A. Yes, including Fox.

7 Q. Right. Now, when Fox holds up the
8 RedEye newspaper, you don't think that is an
9 infringement of the trademark, do you?

10 A. I haven't thought about that. No, they
11 are not calling their show Red Eye.

12 Q. And WGN doesn't call its show Red Eye
13 either, does it?

14 A. No.

15 Q. Do you know how long the segment with
16 Larry Potash lasts on WGN on Fridays?

17 A. I don't.

18 Q. Do you think that the fact that there is
19 a RedEye segment on WGN and a RedEye segment on
20 CLTV causes any confusion?

21 A. No.

22 Q. Now I'd like to switch over to the
23 RedEye segment on the CLTV.

24 Why is it that you have this reporter go

EXHIBIT C



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Typed Drawing

Word Mark	COCA-COLA
Goods and Services	IC 025. US 022 039. G & S: Clothing for men, women and children, namely, belts, jackets, coats, tops, vests, shirts, blouses, jerseys, bottoms, shorts, pants, trousers, boxer shorts, dresses, skirts, neckties, scarves, bandannas, night gowns, night shirts, pajamas, loungewear, socks, sweaters, sweat shirts, sweat pants, cummerbunds, aprons, t-shirts, headwear, hats, caps; sun visors; slippers. FIRST USE: 19300101. FIRST USE IN COMMERCE: 19300101
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	78263999
Filing Date	June 18, 2003
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	March 2, 2004
Registration Number	2844968
Registration Date	May 25, 2004
Owner	(REGISTRANT) The Coca-Cola Company CORPORATION DELAWARE One Coca-Cola Plaza Atlanta GEORGIA 30313
Attorney of Record	Schuylla M. Goodson
Prior Registrations	0047189;0229380;AND OTHERS
Type of Mark	TRADEMARK
Register	PRINCIPAL

Live/Dead
Indicator LIVE

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Typed Drawing

Word Mark **COCA-COLA**

Goods and Services IC 028. US 022 023 038 050. G & S: Board games; checker sets; playing cards; card games; puzzles; balloons; hand held unit for playing electronic games; Christmas decorations and accessories of all kinds, namely, Christmas tree skirts, artificial Christmas garlands; Christmas tree ornaments; Christmas stockings; Christmas tree decorations; snow globes; sporting equipment and accessories for soccer, namely, soccer balls; sporting equipment and accessories for golf, namely, golf balls, golf tees, golf ball markers, ball cleaners, golf putters, divot repair tools, golf bags; sporting equipment and accessories for skating, namely, in-line skates, skate boards; elbow pads for athletic use; knee pads for athletic use; shin pads for athletic use; badminton game playing equipment; sporting equipment and accessories for fishing, namely, fishing lures; billiard cues, billiard balls, billiard game playing equipment and accessories, namely billiard bridges, billiard bumpers, billiard chalk, billiard cue racks, billiard cushions, billiard nets, billiard tables, billiard tally balls, billiard tips, billiard triangles, cue sticks for billiard or pool; snow sleds for recreational use; pinball machines; sport balls; toy vehicles; toy electric trains; toy model train sets; train set accessories, namely, artificial trees, turf, foliage, ballast, buildings, figurines, billboards, lichen and grass; toy banks, toy mobiles, multiple activity baby toys; dart board cases; dart boards; dolls and accessories therefor; plush toys; yo-yos; flying discs; inflatable toys. FIRST USE: 19200101. FIRST USE IN COMMERCE: 19200101

Mark Drawing Code (1) TYPED DRAWING

Serial Number 78264035

Filing Date June 18, 2003

Current Filing Basis 1A

Original Filing Basis 1A

Published for Opposition March 2, 2004

Registration Number 2844970

Registration Date May 25, 2004
Owner (REGISTRANT) The Coca-Cola Company CORPORATION DELAWARE One Coca-Cola Plaza Atlanta GEORGIA 30313
Attorney of Record Schuylla M. Goodson
Prior Registrations 0047189;0229380;AND OTHERS
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark	COCA-COLA
Goods and Services	IC 027. US 019 020 037 042 050. G & S: Rugs; carpets; shoe scrapers, namely door mats; bath mats; wallpaper; tapestry-style wall hangings, not of textile. FIRST USE: 19760101. FIRST USE IN COMMERCE: 19760101
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	78264020
Filing Date	June 18, 2003
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	August 17, 2004
Registration Number	2901651
Registration Date	November 9, 2004
Owner	(REGISTRANT) The Coca-Cola Company CORPORATION DELAWARE P.O. Box 1734 Atlanta GEORGIA 30301
Attorney of Record	Schuylla M. Goodson
Prior Registrations	0229380;AND OTHERS
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Typed Drawing

Word Mark	COCA-COLA
Goods and Services	IC 026. US 037 039 040 042 050. G & S: Clothing, namely, belt buckles not of precious metal; thimbles; ornamental novelty pins; embroidered patches for clothing; embroidery; clothing hooks; artificial wreaths. FIRST USE: 19150101. FIRST USE IN COMMERCE: 19150101
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	78264009
Filing Date	June 18, 2003
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	March 2, 2004
Registration Number	2844969
Registration Date	May 25, 2004
Owner	(REGISTRANT) The Coca-Cola Company CORPORATION DELAWARE One Coca-Cola Plaza Atlanta GEORGIA 30313
Attorney of Record	Schuyla M. Goodson
Prior Registrations	0047189;0229380;AND OTHERS
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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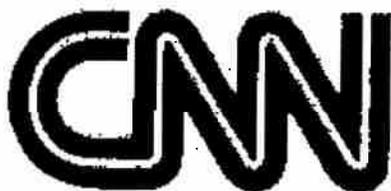
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Word Mark	CNN
Goods and Services	IC 020. US 002 013 022 025 032 050. G & S: plastic key chains, [travel pillows, hand-held mirrors, and picture frames]. FIRST USE: 19930700. FIRST USE IN COMMERCE: 19930700
Mark Drawing Code	(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
Serial Number	75629446
Filing Date	January 28, 1999
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	July 18, 2000
Registration Number	2392818
Registration Date	October 10, 2000
Owner	(REGISTRANT) Cable News Network LP, LLLP Turner Broadcasting System, Inc., a Georgia corporation and CNN Investment Company, Inc., a Delaware corporation LIMITED PARTNERSHIP DELAWARE One CNN Center 13 North Atlanta GEORGIA 30303
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of	

Record Claire M. Kimball
Prior Registrations 1597839;1922470
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
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Word Mark CNN
Goods and Services IC 009. US 021 023 026 036 038. G & S: electrical and scientific apparatus; namely, prerecorded videocassettes and prerecorded compact discs featuring current events and general information, binoculars, calculators, [cameras and camera cases,] decorative refrigerator magnets, [magnifying glasses,] mouse pads, [radios, clock radios, and sunglasses]. FIRST USE: 19930700. FIRST USE IN COMMERCE: 19930700
Mark Drawing Code (5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
Serial Number 75629542
Filing Date January 28, 1999
Current Filing Basis 1A
Original Filing Basis 1A
Published for Opposition June 27, 2000
Registration Number 2387137
Registration Date September 19, 2000
Owner (REGISTRANT) Cable News Network LP, LLLP (Turner Broadcasting System, Inc., a Georgia corporation) and a limited partner CNN Investment Company, Inc., a Delaware corporation LIMITED PARTNERSHIP DELAWARE One CNN Center 13 North Atlanta GEORGIA 30303

Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record CLAIRE M. KIMBALL
Prior Registrations 1597839;1922470
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
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Word Mark	CNN
Goods and Services	IC 016. US 002 005 022 023 029 037 038 050. G & S: paper goods and printed matter; namely, [crayons, decals,] folders for loose writing paper, desk sets, [note cards,] daily planners, data books, [calendars,] highlighting markers and pens, markers, paperweights, [pen holders,] pencils, pens, playing cards and postcards. FIRST USE: 19930700. FIRST USE IN COMMERCE: 19930700
Mark Drawing Code	(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
Serial Number	75629533
Filing Date	January 28, 1999
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	August 22, 2000
Registration Number	2403383
Registration Date	November 14, 2000
Owner	(REGISTRANT) Cable News Network LP, LLLP Turner Broadcasting Systems, Inc. a Georgia corporation and CNN Investment Company, Inc., a Delaware corporation LIMITED LIABILITY LIMITED PARTNERSHIP DELAWARE One CNN Center 13 North Atlanta GEORGIA 30303

Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record Claire M. Kimball
Prior Registrations 1597839;1922470
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
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