ESTTA Tracking number: **ESTTA671364**
Filing date: **05/08/2015**

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

Proceeding	91212024
Party	Defendant Brooks Entertainment Inc.
Correspondence Address	RICHARD B JEFFERSON METAL LAW GROUP LLP 5757 WILSHIRE BLVD PH3, MUSEUM SQ LOS ANGELES, CA 90036 UNITED STATES rjefferson@metallawgroup.com
Submission	Reply in Support of Motion
Filer's Name	Richard B. Jefferson
Filer's e-mail	rjefferson@metallawgroup.com
Signature	/Richard B. Jefferson/
Date	05/08/2015
Attachments	TTAB_ApplicantREPLYtoMSJ (91212024).pdf(90136 bytes)

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

Opposition No.: 91212024

In the Matter of Application
Serial No. 85/551,808

Filed on: February 24, 2012

Published in the Official Gazette on:
July 23, 2013

REPUBLIC TECHNOLOGIES (NA), LLC

Opposer,

v.

BROOKS ENTERTAINMENT, INC.

Applicant.

Opposition No. 91212024

APPLICANT'S REPLY TO OPPOSER'S OPPOSITION TO APPLICANT'S MOTION FOR SUMMARY JUDGMENT

As predicted in Applicant's Motion For Summary Judgment (the "MSJ"), Opposer argues in its Opposition to the MSJ (the "MSJ Opposition") that the Board should simply ignore the *sufficient dissimilarity* between Applicant's Mark and Opposer's Mark and disregard the precedent set forth in the MSJ in support thereof. It is crystal clear that Applicant's Mark and Opposer's Mark are sufficiently dissimilar. When this is true, precedent dictates that the analysis is complete.

Opposer has chosen to focus on the *du Pont* factors that, frankly, would make any two marks in the same international class, whether similar or dissimilar, appear to be confusing. In other words, Opposer is conveniently discounting the similarity *du Pont* factor and tailoring its analysis to fit Opposer's desired outcome.

Furthermore, Opposer's failure to produce a shred of evidence that supports any consumer confusion between the marks during discovery or in the MSJ Opposition, which is its last chance to argue before a decision by the Board on the MSJ, makes its contention that the marks are "highly similar" unsupported. See Page 1, ¶1 Opposer's Memorandum In Opposition To Applicant's Motion for Summary Judgment. The declaration from Seth Gold that was concurrently submitted with the MSJ Opposition does not even address the direct issue of whether confusion between the two marks exists. See Declaration of Seth I. Gold.

Opposer also seems to imply that its previous opposition proceedings have some relevance to this proceeding. See Page 4, ¶3 of Opposer's Memorandum In Opposition To Applicant's Motion for Summary Judgment. This simply is not true. In opposition proceeding number 91174931 (ZOB – Design Mark) the applicant failed to file an answer and the Board granted a judgment by default. In opposition proceeding number 91193021 (JAB – Word Mark) the applicant abandoned its application without filing an answer. In opposition proceeding number 91210415 (S.O.B. – Word Mark) the applicant abandoned its application before filing an answer. Unlike this proceeding, none of the previous opposition proceedings made it past the pleading stage so the merits were never reached. Opposer has not been engaged in a proceeding that was contested.

Applicant does not dispute that Opposer's mark has been in existence for a long time; however, based on the solid precedent set forth in Applicant's Memorandum in Support of Summary Judgment, the existence of Opposer's Mark should not prevent the registration of Applicant's Mark since the marks are sufficiently dissimilar.

Applicant has demonstrated that there is no genuine dispute of material fact that the marks are *sufficiently dissimilar*, and Opposer has failed to present any evidence in its pleading that supports a position to the contrary. Therefore, summary judgment should be entered in favor of Applicant and this proceeding should be dismissed in its entirety.

Dated: May 8, 2015

Respectfully submitted,

M.E.T.A.L. LAW GROUP, LLP
Attorneys for Brooks Entertainment, Inc., "Applicant"

By: /Richard B. Jefferson/
Richard B. Jefferson, Esq.

M.E.T.A.L. Law Group, LLP
Museum Square
5757 Wilshire Blvd., PH 3
Los Angeles, CA 90036
T: (323) 289-2260, ext. 102
F: (323) 289-2261

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **APPLICANT'S REPLY TO OPPOSER'S OPPOSITION TO APPLICANT'S MOTION FOR SUMMARY JUDGMENT** was served via U.S. Mail, postage prepaid, on this 5th day of May, upon the attorney of record for Opposer:

Antony J. McShane
Neal, Gerber & Eisenberg, LLP
2 North LaSalle Street, Suite 1700
Chicago, Illinois 60602

By: /Richard B. Jefferson/
Richard B. Jefferson