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

Proceeding	91216552
Party	Plaintiff Frame Logic Digital LLC
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Submission	Other Motions/Papers
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Date	07/15/2014
Attachments	opposer's response to applican't motion to dismiss.pdf(651173 bytes )

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FRAME LOGIC DIGITAL LLC )  
 )  
 Opposer, )  
 )  
 ) Opposition No. 91216552  
 ) Serial No.  
 v. )  
 )  
 TECHNICOLOR SOCIETE ANONYME )  
 )  
 Applicant. )  
 )  
-----X

Opposer's Response to Applicant's Motion to Dismiss

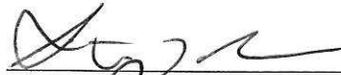
Opposer responds to Applicant's Motion to Dismiss as follows:

1. The motion to dismiss only addresses Count II which relates to dilution. Therefore, Counts I and III are not at issue here.
2. Applicant alleges that Count II of the Notice of Opposition fails to state a claim because while it alleges that Opposer's mark is famous, "it does not state when Opposer's mark allegedly became famous." Opposer disagrees.
3. To adequately set forth a claim of "dilution," a party only needs to allege that a mark is a) famous and distinctive, and b) that use by another party is causing dilution by blurring and impairing the distinctiveness of the mark, all to the detriment of the trademark owner. Opposer's Count II contains those elements.
4. Applicant asserts that a claim must set forth "when" a mark became distinctive. Opposer counters by stating that the mark was distinctive and famous at least as early as the date the Opposition was filed. This can be implied from the Notice itself.
5. Applicant's relies on *Polaris Industries, Inc. v. DC Comics*, 59 USPQ.2d 1798 (TTAB 2000). However, that case is distinguishable from the current situation. In *Polaris*, the Opposer was attempting to amend its Notice of Opposition to include a claim of dilution. However, in order to amend a claim, a pleading must be legally sufficient. In *Polaris*, the claim only would be sufficient if use of the Applicant's mark began after the trademark became famous. In *Polaris*, timing

was crucial because there was an open question whether the Applicant's "use" began before or after the mark became famous, and there was no allegation of when use occurred. Contrasted against that, Applicant filed its Notice of Opposition against an Intent to Use application. Therefore, no amendment containing the date when Opposer's mark became famous is necessary.

Based on the above, Opposer respectfully requests that the Board deny the Applicant's Motion to Dismiss Count II.

FRAME LOGIC DIGITAL LLC



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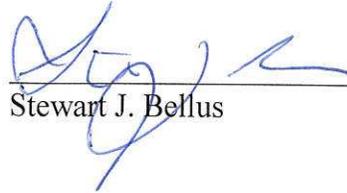
Attorneys for Opposer FRAME LOGIC  
DIGITAL LLC

Date: July 15, 2014

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the forgoing Response to Applicant's Motion to Dismiss has this 15th day of July 2014 been sent by prepaid First Class Mail to:

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