

original

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

.....X	:	
Motion Picture Association of America, Inc.,	:	
	:	
Opposer,	:	Opposition No.: 153141
	:	
-- v. --	:	Serial No.: 75/654662
	:	
Respect Sportswear, Inc.,	:	
	:	
Applicant.	:	
.....X	:	



05-14-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #39

NOTICE OF MOTION TO FURTHER EXTEND DISCOVERY PERIOD
FOR THIRTY (30) DAYS FROM DECISION ON THIS MOTION

I. INTRODUCTION:

Applicant, Respect Sportswear, Inc., ("Applicant"), hereby moves for an order extending the discovery period which is currently set to expire on May 14, 2004, such that it be extended for at least thirty (30) days from the date the Board issues a decision on this Motion.

II. BACKGROUND FACTS:

Pursuant to the testimony schedule issued by the Board, the parties were to complete discovery by May 14, 2004. (Copy of Schedule attached hereto as Exhibit A). Applicant was scheduled to depose Opposer's witness, Ms. Joan Graves, by telephone on May 6, 2004. At such time, I inadvertently failed to have a notary present to swear in Ms. Graves. Andrew Baum, Esq., counsel for Opposer, refused to reschedule the deposition. Moreover, at the very last moment, Mr. Baum delivered a consumer survey to me, which would have been something to have discussed with Ms. Graves. My office received it on May 5, 2004, but I was out of town, and I did not see it after May 7, 2004.

If I had gone forward with the deposition as scheduled, I would not have been able to question her on the survey, which is thirty-six (36) pages long, and was conducted between May and July 2000. (Copy of the transmittal letter dated May 5, 2004, attached hereto as Exhibit B). Even had I seen the survey in time, there was insufficient time for me to properly review it and prepare for the deposition of Ms. Graves, the following day. There is no reason Opposer's counsel waited until the day before the deposition to send the survey to me, unless it was to make it impossible for me to review it carefully.

Counsel for parties exchanged correspondence concerning an extension of time. (Copies of letters attached collectively hereto as Exhibit C). Mr. Baum has refused to extend the discovery time, necessitating this Motion.

III. ARGUMENT:

Applicant believes that an extension of time to depose Opposer's witness, Ms. Graves, is proper herein. First, Applicant believes that its inadvertent failure to have a notary present in California last week is not a sufficient basis to preclude disclosure. It was a simple matter for Opposer to have one present in California at her office. Moreover, Ms. Graves is not prejudiced, as she has already prepared for the deposition. However, the most compelling reason for an extension is that it appears that Opposer planned to "ambush" Applicant by serving a 2000 survey just before Ms. Graves was to testify. There is no reason why Mr. Baum waited until the last minute to provide an essential piece of evidence. It was bad faith on Opposer's side, and should excuse any inadvertent error by Applicant for not proceeding on May 6, 2004 with Ms. Graves' deposition.

I respectfully submit that the above is good cause to grant the extension, as no prejudice will be suffered by Opposer, and this would permit full disclosure herein which will result ultimately in a fair and just determination of the issues herein.

IV. CONCLUSION:

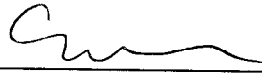
In light of the foregoing, Applicant requests that the Board extend the current discovery period, which is currently set to expire on May 14, 2004, until at least thirty (30) days after the Board issues its decision on this Motion.

Dated: May 13, 2004
New York, New York

Respectfully submitted,

Simon V. Haberman, P.C.

By:


Simon V. Haberman, Esq.
Attorneys for Applicant
Respect Sportswear, Inc.
1 West 85th Street, Suite 4A
New York, NY 10024
(212) 873-2900

TO: Andrew Baum, Esq.
Darby & Darby, P.C.
Attorneys for Opposer,
Motion Picture Association of America, Inc.
805 Third Avenue
New York, NY 10022
(212) 527-7700

CERTIFICATION

I hereby certify that a copy of the foregoing NOTICE OF MOTION TO FURTHER EXTEND DISCOVERY PERIOD FOR THIRTY (30) DAYS FROM DECISION ON THIS MOTION was served on May 13, 2004 via first class mail, postage pre-paid, on Opposer's counsel addressed as follows;

Andrew Baum, Esq.
Darby & Darby, P.C.
805 Third Avenue
New York, NY 10022


Anthony Mariano

EXHIBIT A

APR 01 2004

05869/7001175-000

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

MOTION PICTURE ASSOCIATION OF
AMERICA, INC.,

Opposer,

v.

RESPECT SPORTSWEAR, INC.,

Applicant.

Opposition No. 153,141

EXPRESS MAIL CERTIFICATE

Date 3/30/04 Label No. 81028646956-

I hereby certify that on the date indicated above, this paper or
fee was deposited with the U.S. Postal Service & that it was
addressed for delivery to the Assistant Commissioner for
Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3514
by "Express Mail Post Office to Addressee" service.

D. DAVIS
Name (Print)

D. Davis
Signature

**CONSENT MOTION TO EXTEND DISCOVERY
PERIOD AND TESTIMONY DATES FOR THIRTY (30) DAYS**

The parties hereby move, on consent, that the discovery period be extended for thirty (30) days. Presently, the date for discovery to close is April 15, 2004. The parties respectfully request that the Board extend this deadline to May 14, 2004.

Opposer also respectfully requests that the testimony dates be extended thirty (30) days so that the new dates are as follows:

Testimony period for party in position of plaintiff to close: August 13, 2004.
(opening thirty days prior thereto)

Testimony period for party in position of defendant to close: October 12, 2004
(opening thirty days prior thereto)

Rebuttal testimony period to close: November 26, 2004
(opening fifteen days prior thereto)


This request is not made for purposes of delay. Applicant has noticed the deposition of the principal of opposer during a time in which counsel for opposer will be out of the country. The parties believe and expect that discovery will be completed by the new deadline.

Counsel for Applicant, Simon V. Haberman, consented to this motion on March 29, 2004.

Dated: March 30, 2004

Respectfully submitted,

DARBY & DARBY P.C.

By: 
Andrew Baum
Heather C. Wilde
P.O. Box 5257
New York, NY 10150-5257
(212) 527-7700

Attorneys for Opposer
MOTION PICTURE
ASSOCIATION OF AMERICA, INC.

APR 12 2004

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: April 7, 2004

Opposition No. 91153141

MOTION PICTURE
ASSOCIATION OF AMERICA,
I

v.

RESPECT SPORTSWEAR, INC.

Karl Kochersperger, Paralegal

Opposer's consented motion filed March 31, 2004 to extend discovery and trial dates is granted. Trademark Rule 2.127(a).

The discovery and trial dates are reset in accordance with opposer's motion.

EXHIBIT B

DARBY &
DARBY
PROFESSIONAL
CORPORATION

INTELLECTUAL PROPERTY LAW

NEW YORK
805 THIRD AVENUE
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SEATTLE
1191 SECOND AVENUE
SEATTLE, WA 98101
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May 5, 2004

Reference: 05869/7001175-000

ANDREW BAUM
MEMBER OF THE FIRM
(212) 527-7722
abaum@darbylaw.com

MAY 05 2004

BY HAND

Simon V. Haberman, Esq.
1 West 85th Street
Suite 4A
New York, New York 10024

Re: *MPAA v. Respect Sportswear, Inc.*

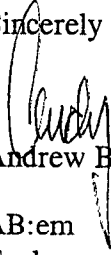
Dear Simon:

In our response to your Interrogatory 20, we stated that we may rely on a September 2000 report of the Federal Trade Commission in connection with consumer opinions or perceptions concerning the disputed certification marks. In preparing for the deposition of Ms. Graves I noticed that we had never produced that document to you.

A copy is enclosed. We call your attention in particular to page 10, which reports the result that 91% of the parents surveyed were aware of the rating system for movies.

We have set up a conference call number which you should dial into at the time of the deposition. The dial in number is 800-482-3251. The pass code is 606269#.

Sincerely yours,


Andrew Baum

AB:em
Enclosure

EXHIBIT C

DARBY &
DARBY.

PROFESSIONAL
CORPORATION

MAY 06 2004

INTELLECTUAL PROPERTY LAW

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May 6, 2004

Reference: 05869/7001175-000

ANDREW BAUM
MEMBER OF THE FIRM
(212) 527-7722
abaum@darbylaw.com

VIA FACSIMILE - 1-212-724-6200 - PAGE(S) - 1
Confirmation Copy Via First Class Mail

Simon V. Haberman, Esq.
1 West 85th Street
Suite 4A
New York, New York 10024

Re: *MPAA v. Respect Sportswear, Inc.*

Dear Simon:

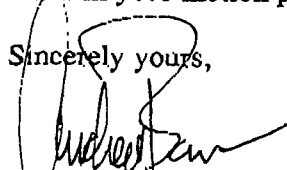
Pursuant to your notice of deposition and our previous agreement, our client set up a call-in number so that you could take the telephone deposition of Joan Graves at 2:00 today. You, Ms. Graves and I were on the line at or about that time.

No court reporter was present, either in New York or with Ms. Graves. You stated that you wanted to record the deposition and make your own transcription of it from your own tape. I objected on the ground that the Federal Rules require a deponent to be sworn and that the deposition must be transcribed by or under the supervision of an officer. You asked whether I would permit the examination to proceed. I said that I would not because it would amount to an interview of my client and not a discovery deposition. You then said that you would "get a ruling" and hung up.

This letter is to confirm that the deponent duly appeared for the noticed deposition at the agreed upon date and time. You chose not to take the deposition. We do not intend to produce Ms. Graves again.

If you make any kind of motion with respect to this deposition, please include this letter in your motion papers.

Sincerely yours,


Andrew Baum

AB:em

cc: Jill Ratner, Esq.
Heather Wilde, Esq.

LAW OFFICES OF
SIMON V. HABERMAN P.C.
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Via Airborne Express

May 13, 2004

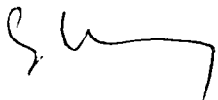
United States Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, VA 22202-3513

RE: Opposition Number: 153,141
MPAA vs. Respect Sportswear, Inc.

Dear Sir/Madam:

We are the attorneys for Respect Sportswear, Inc. Enclosed is the original Notice of Motion To Further Extend Discovery Period for Thirty (30) Days from Decision on this Motion. Thank you.

Very truly yours,



Simon V. Haberman
SVH:am

cc: Darby & Darby, P.C.



05-14-2004

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #39