

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

<p>MOTION PICTURE ASSOCIATION OF AMERICA, INC.,</p> <p style="text-align: center;">Opposer,</p> <p style="text-align: center;">vs.</p> <p>RESPECT SPORTSWEAR, INC.,</p> <p style="text-align: center;">Applicant.</p>	<p>Opposition No. 153,141</p> <p>EXPRESS MAIL CERTIFICATE Date: <u>6/1/04</u> Label No: <u>EV 251491542 US</u> 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. <u>D. Davis</u> <u>D. Davis</u> Name (Print) Signature</p>
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OPPOSER'S RESPONSE TO APPLICANT'S MOTION TO EXTEND DISCOVERY PERIOD

This motion was completely unnecessary. Opposer, Motion Picture Association of America, Inc. ("MPAA") does not oppose Applicant's motion to extend the discovery period for thirty (30) days from a decision on this motion. Had Applicant sought Opposer's consent before filing this motion, Opposer would had given it.

In its motion, Applicant claims that undersigned counsel for Opposer "refused to extend the discovery time." This is completely false. Counsel for Applicant never asked whether Opposer would consent to an extension. Examination of the correspondence attached to Applicant's motion is devoid of any discussion of extending the discovery period. The first that Opposer heard on the subject of extending discovery was when it received this motion.

While it is not necessary to the resolution of this motion, Opposer must take issue with Applicant's contention that it was *Opposer's* obligation to hire a court reporter or notary to swear its own witness in a discovery deposition. A deposition taken by telephone is deemed

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taken in the district and at the place where the deponent is to answer the questions. Rule 30(b)(7), Fed. R. Civ. P. The proper procedure would have been for Applicant to hire a court reporter to be present with the witness (in Encino, California), to swear the witness and transcribe the testimony. *Aquino v. Automotive Serv. Indus. Ass'n*, 93 F. Supp.2nd 922, 923-924 (N.D. Ill. 2000). Opposer would have been willing to permit the deposition to go forward even if Applicant had hired a court reporter in New York to swear the witness over the phone and transcribe the testimony. But Applicant did not make even this effort. Opposer properly refused to have its witness questioned outside the presence of a court officer. Applicant's failure to take the deposition of Ms. Graves was entirely its own fault.

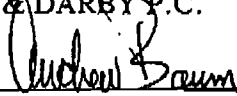
CONCLUSION

Opposer does not oppose Applicant's motion to extend the discovery period in this case for thirty (30) days following a decision on this motion.

Respectfully submitted,

Dated: June 1, 2004
New York, New York

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Attorneys for Opposer
MOTION PICTURE ASSOCIATION OF
AMERICA, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing OPPOSERS RESPONSE TO APPLICANT'S MOTION TO EXTEND DISCOVERY PERIOD was served on June 1, 2004 by First Class Mail, postage prepaid, on Applicant's counsel addressed as follows:

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



Return of this card properly stamped, will acknowledge receipt of **OPPOSER'S RESPONSE TO APPLICANT'S MOTION TO EXTEND DISCOVERY PERIOD** (in triplicate)

Opposer : MOTION PICTURE ASSOCIATION OF AMERICA, INC.

v.

Applicant : RESPECT SP

Opp. No. : 153,141

Mark : RATED

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Attorney : AB/em

File No. : 05869/7001175-000

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DATE: July 2, 2004

TELECOPIER TRANSMISSION COVER SHEET

NUMBER TRANSMITTING TO: 1-703-746-7072.
TO: UNITED STATES PATENT AND TRADEMARK OFFICE
EXAMINER: AL ZERVAS

Opposition No.: 153,141 Serial No.: 75/654,662

FROM: ANDREW BAUM - 1-212-527-7762

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TO EXTEND DISCOVERY PERIOD; POSTCARD STAMPED BY THE PTO
ACKNOWLEDGING RECEIPT OF RESPONSE

NO. OF PAGES (INCLUDING COVER SHEET): 5


COMMENTS: Pursuant to our telephone conversation earlier today, I enclose the
above-referenced documents showing proof that we timely filed a Response in this matter. Please
do not hesitate to contact me if you need anything else.

CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that these papers are being facsimile transferred to the United States Patent and
Trademark Office on the date shown below.

ELIZABETH MARMO
Name

July 2, 2004
Date


Signature

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