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

08/07/2003 TTAB



08-07-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

DROWNING POOL, LLC, a Texas Limited
Liability Company,

Opposition No. 91154398

Opposer,

v.

Mark: DROWNING POOL

Serial No. 76/287792

DROWNING POOL, a California
partnership.

Filed: July 20, 2001

Published: November 12, 2002

Applicant.

**APPLICANT'S MOTION TO COMPEL RESPONSES TO
FIRST SET OF DISCOVERY REQUESTS**

I. INTRODUCTION

Applicant Drowning Pool, a California partnership, (hereinafter "Applicant") hereby moves to compel responses to its first set of discovery requests and the production of documents and things responsive thereto. Applicant's motion is made pursuant to 37 CFR § 2.120(e) and TBMP § 523 et seq.

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II. OPPOSER HAS REFUSED TO RESPOND TO APPLICANT'S DISCOVERY REQUESTS OR MEET AND CONFER REGARDING THE DISCOVERY DISPUTE.

Applicant served its first set of discovery requests on Opposer Drowning Pool LLC (hereinafter "Opposer") on April 2 and 3, 2003. *See* Declaration of Gordon E. Gray III, Exhibit 1. Opposer was given two extensions of time to respond to Applicant's First Set of Document Requests and Applicant's First Set of Interrogatories. Decl. of Gray, ¶3. Opposer's responses to the first set of requests were ultimately due on July 7, 2003, more than three months after they were first served. *See* Decl. of Gray, Exhibit 2. No responses were served by Opposer. Decl. of Gray, ¶3.

On July 15, 2003, counsel for Applicant sent a letter to opposing counsel seeking to resolve the discovery dispute. Decl. of Gray, Exhibit 2. Counsel for Applicant requested a meeting of counsel on July 24, 2003 to meet and confer regarding Opposer's failure to respond. *Id.* However, counsel for Opposer failed to appear telephonically at the meeting of counsel on July 24, 2003. Decl. of Gray, ¶4. Instead, counsel for Opposer sent an email stating that he would call back on Friday, July 25 or Monday, July 28. Decl. of Gray, Exhibit 3. Opposer's counsel has not called or corresponded with Applicant's counsel since July 24, 2003 on any matter. Clearly, Opposer has refused to respond to Applicant's first set of discovery requests and refused to meet and confer regarding the resulting discovery dispute.

Applicant seeks an order from the Board to compel Opposer's responses without objection to the pending discovery requests and production of all documents and things

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responsive to the requests. Applicant's motion is based on a plain reading of FRCP, Rule 37, 37 CFR § 2.120(e) and TBMP § 523 et seq.

Opposer has provided no reason for its failure to respond to Applicant's timely discovery requests or for its failure to meet and confer with Applicant's counsel. In particular, Opposer has provided no discovery to Applicant regarding its allegation that Applicant has abandoned its trademark, Opposer's sole alleged basis for the present opposition. The discovery period has now concluded. See Decl. of Gray, Exhibit 4. Yet, Opposer has not provided any evidentiary basis for its case. Opposer should be compelled to respond to Applicant's document requests and interrogatories and produce all responsive documents and things.

III. CONCLUSION

Applicant respectfully requests an order from the Board compelling Opposer's responses without objection to Applicant's First Set of Document Requests and Applicant's First Set of Interrogatories and compelling production of all documents and things responsive thereto.

Respectfully submitted,

DROWNING POOL

Dated: 8/4/2003

By: Gordon E. Gray III
Gordon E. Gray III
GRAY LAW FIRM
4401 N. Atlantic Ave., Suite 233
Long Beach, CA 90807
Telephone: (562) 984-2020
Fax: (562) 984-2019
Email: geg@grayiplaw.com
Attorney for Applicant

00445720001100

DECLARATION OF GORDON E. GRAY III

I, Gordon E. Gray III, do hereby declare:

1. I am licensed to practice law in the State of California and before the United States Patent and Trademark Office. I am a sole practitioner in the Gray Law Firm, counsel of record for Applicant Drowning Pool, a California partnership. I have personal knowledge of the matters set forth herein, and if called upon to testify, could and would testify competently thereto.

2. I served Applicant's first set of discovery requests on Opposer Drowning Pool LLC (hereinafter "Opposer") on April 2 and 3, 2003. A true and correct copy of Applicant's First Set of Document Requests and Applicant's First Set of Interrogatories is attached hereto as Exhibit 1.

3. Opposer was given two extensions of time to respond to Applicant's First Set of Document Requests and Applicant's First Set of Interrogatories. Opposer's responses to the first set of requests were ultimately due on July 7, 2003, more than three months after they were first served. However, no responses were served by Opposer.

4. On July 15, 2003, I sent a letter to opposing counsel seeking to resolve the discovery dispute. A true and correct copy of the July 15, 2003 letter is attached hereto as Exhibit 2. In the letter, I requested a meeting of counsel on July 24, 2003 to meet and confer regarding Opposer's failure to respond. However, counsel for Opposer failed to appear telephonically at the meeting of counsel on July 24, 2003. Instead, counsel for Opposer sent an email stating that he would call back on Friday, July 25 or Monday, July 28. A true and correct copy of the July 24 email is attached hereto as Exhibit 3. Opposer's counsel has not called or

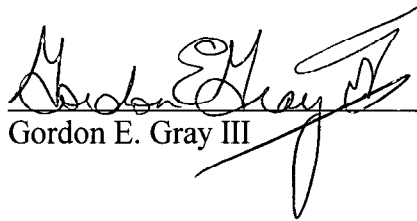
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corresponded with me since July 24, 2003 on any matter.

5. The discovery period set by the Board concluded on August 1, 2003. A true and correct copy of the Board's scheduling order is attached hereto as Exhibit 4.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on this 4th day of August, 2003, at Irvine, California.


Gordon E. Gray III

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

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Liability Company,

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08-07-2003
U.S. Patent & TMO/TM Mail Rcpt Dt. #22

APPLICANT'S FIRST SET OF DOCUMENT REQUESTS

TO OPPOSER:

Applicant Drowning Pool, a California Partnership, hereby propounds the following document requests to Opposer Drowning Pool LLC ("Opposer"). Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Opposer shall produce the following documents for inspection and copying at the offices of GRAY LAW FIRM, 4401 N. Atlantic Ave., Suite 233, Long Beach, California 90807 at 10:00 a.m. on May 8, 2003.

Furthermore, Opposer is required to provide a written response to the following requests within thirty (30) days after service hereof, and is further required to supplement any response in accordance with the Federal Rules of Civil Procedure.

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INSTRUCTIONS AND DEFINITIONS

1. The term "DOCUMENT" (and its plural) includes information containing matter of any kind, including, but not limited to, written, printed, typed, and visually or orally reproduced material of any kind, whether or not privileged, such as (by way of example and not by way of limitation) letters, notes, memoranda, summaries, minutes, interoffice communications, invoices, purchase orders, receipts, drawings or sketches, viewgraphs, photographs, computer storage media such as tapes or disks capable of being mechanically, electronically, or optically read, computer printouts, advertising or promotional literature, operating manuals or instructions bulletins, cables or telegrams, microfilm, video tapes, tape or other records, test data, and reports, and includes the original and all copies (whether or not different from the original because of notes made on or attached to each copy or otherwise).

2. A document "RELATING" or which "RELATES" to any given subject means any document that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any way pertinent to that subject, including, without limitation, documents concerning the preparation or transmittal of other documents.

3. The term "OPPOSER" shall mean Drowning Pool LLC, any present or former officer, director, employee, agent, attorney, or other representative acting on behalf of OPPOSER, and shall include any predecessor, successor, parent or subsidiary entity, either United States or foreign.

11. The term "IDENTIFY" means, with regards to documents, to:
- (a) describe the nature of the document (e.g., letter or memorandum);
 - (b) state the date of the document;
 - (c) identify the persons who sent and received the original and a copy of the document;
 - (d) state in as much detail as possible the contents of the document; and
 - (e) state the manner and date of the disposition of the document.
12. The term "IDENTIFY," with respect to PERSONS, shall mean state the

PERSON's:

- (a) name;
- (b) last known address; and,
- (c) last known phone number.

DOCUMENTS TO BE PRODUCED

REQUEST NO. 1:

All DOCUMENTS which YOU contend support YOUR allegation that Applicant “abandoned” its Drowning Pool mark as alleged in Opposer’s Notice of Opposition.

REQUEST NO. 2:

Each and every trademark or service mark search YOU conducted regarding the mark “Drowning Pool.”

REQUEST NO. 3:

All DOCUMENTS RELATING to any communications between YOU and Adam Elesh.

REQUEST NO. 4:

All DOCUMENTS RELATING to any communications between YOU and Brett Smith.

REQUEST NO. 5:

ALL DOCUMENTS RELATING to any communications between YOU and John Miner.

REQUEST NO. 6:

ALL DOCUMENTS RELATING to any communications between YOU and John Thomas.

REQUEST NO. 7:

Each document that constitutes, refers or relates to any assignment or license of any trademark rights for the mark "Drowning Pool."

REQUEST NO. 8:

ALL DOCUMENTS that set forth or that may be used to determine the date and manner in which YOU first became aware of Applicant's DROWNING POOL mark.

REQUEST NO. 9:

ALL DOCUMENTS that set forth or that may be used to determine the date and manner in which YOU contend YOU first used "Drowning Pool" as a mark..

REQUEST NO. 10:

All DOCUMENTS that set forth or that may be used to determine the date and manner in which YOU contend YOU first used "Drowning Pool" as a mark in interstate commerce.

REQUEST NO. 11:

All DOCUMENTS that refer or relate to Applicant.

REQUEST NO. 12:

All DOCUMENTS RELATING to any communications between YOU and Bruce Licher.

REQUEST NO. 13:

All DOCUMENTS that YOU contend evidence that Applicant lacked intent to resume use of its mark DROWNING POOL.

REQUEST NO. 14:

DOCUMENTS sufficient to establish YOUR advertising expenditures for the mark "Drowning Pool."

REQUEST NO. 15:

DOCUMENTS sufficient to establish the sales in units by YOU of any product, recording, merchandise or other item bearing the mark "Drowning Pool."

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REQUEST NO. 16:

DOCUMENTS sufficient to establish the sales in U.S. dollars by YOU of any product, recording, merchandise or other item bearing the mark "Drowning Pool."

REQUEST NO. 17:

All DOCUMENTS RELATING to any communications between YOU and Independent Project Records.

REQUEST NO. 18:

All DOCUMENTS sufficient to establish any royalties received by YOU for sales of any licensed product, recording, merchandise or other item bearing the mark "Drowning Pool."

Respectfully submitted,

DROWNING POOL

Dated: 4/2/2003

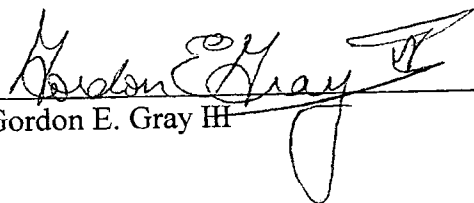
By: 

Gordon E. Gray III
GRAY LAW FIRM
4401 N. Atlantic Ave., Suite 233
Long Beach, CA 90807
Telephone: (562) 984-2020
Fax: (562) 984-2019
Email: geg@grayiplaw.com
Attorney for Applicant

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **APPLICANT'S FIRST SET OF DOCUMENT REQUESTS** was mailed first class mail, postage prepaid, to: J. Rodgers Lunsford III, Smith, Gambrell & Russell, LLP, 1230 Peachtree Street, N.E., Suite 3100, Promenade II, Atlanta, GA 30309-3592, attorney for the Opposer, on this April 2, 2003.



Gordon E. Gray III

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

DROWNING POOL, LLC, a Texas Limited
Liability Company,

Opposer,

v.

DROWNING POOL, a California
partnership.

Applicant.

Opposition No. 91154398

Mark: DROWNING POOL

Serial No. 76/287792

Filed: July 20, 2001

Published: November 12, 2002

APPLICANT'S FIRST SET OF INTERROGATORIES

Applicant Drowning Pool, a California partnership, hereby propounds the following interrogatories to Opposer Drowning Pool LLC ("Opposer"). Each of the following interrogatories is to be answered on behalf of Opposer under oath and in accordance with Rule 33 of the Federal Rules of Civil Procedure.

Opposer is required to respond to the following interrogatories within thirty (30) days after service hereof, and is further required to supplement any response in accordance with the Federal Rules of Civil Procedure.

INSTRUCTIONS AND DEFINITIONS

1. The term "DOCUMENT" (and its plural) includes information containing matter of any kind, including, but not limited to, written, printed, typed, and visually or orally reproduced material of any kind, whether or not privileged, such as (by way of example and not

by way of limitation) letters, notes, memoranda, summaries, minutes, interoffice communications, invoices, purchase orders, receipts, drawings or sketches, viewgraphs, photographs, computer storage media such as tapes or disks capable of being mechanically, electronically, or optically read, computer printouts, advertising or promotional literature, operating manuals or instructions bulletins, cables or telegrams, microfilm, video tapes, tape or other records, test data, and reports, and includes the original and all copies (whether or not different from the original because of notes made on or attached to each copy or otherwise).

2. A document "RELATING" or which "RELATES" to any given subject means any document that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any way pertinent to that subject, including, without limitation, documents concerning the preparation or transmittal of other documents.

3. The term "OPPOSER" shall mean Drowning Pool LLC, any present or former officer, director, employee, agent, attorney, or other representative acting on behalf of Senior Technologies, and shall include any predecessor, successor, parent or subsidiary entity, either United States or foreign.

4. The term "THING" means all tangible objects of any type, composition, construction, or nature.

5. If you claim that any information requested is privileged, please provide all information falling within the scope of the request which is not privileged, and identify with sufficient particularity for purposes of a motion to compel each item of information, document, or thing, separately, with respect to which you claim a privilege, and state:

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- (a) the basis on which the privilege is claimed;
- (b) the author of the document;
- (c) each individual or other person to whom the document or copy thereof was sent or otherwise disclosed; and
- (d) the date of this document.

6. The term "PERSON" shall include both natural persons and corporate or other business entities, whether or not in the employ of OPPOSER, and the acts and knowledge of a person are defined to include the acts and knowledge of that person's directors, officers, members, employees, representatives, agents, and attorneys.

7. Whenever appropriate, the singular form of the word shall be interpreted in the plural, or vice versa; verb tenses shall be interpreted to include past, present and future tenses; and the term "and" as well as "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these requests any documents which might otherwise be construed to be outside their scope.

8. If any or all documents requested herein are no longer in your possession, custody or control because of destruction, loss, or any other reason, then do the following with respect to each and every such document:

- (a) describe the nature of the document (e.g., letter or memorandum);
- (b) state the date of the document;
- (c) identify the persons who sent and received the original and a copy of the document;

12. If documents and things responsive to these Interrogatories cannot be located, state in detail the particulars of the efforts you made to locate such documents or things and the reasons for their disappearance or unavailability to you, and state, to the best of your knowledge, where the documents or things are located, including the name, address and telephone number of the custodian.

13. The term "IDENTIFY," with respect to PERSONS, shall mean state the PERSON's:

- (a) name;
- (b) last known address; and,
- (c) last known phone number.

INTERROGATORIES

INTERROGATORY NO. 1:

IDENTIFY all witnesses that YOU contend support YOUR allegation that Applicant Drowning Pool has "abandoned" its Drowning Pool mark.

INTERROGATORY NO. 2:

Identify the date that YOU first became aware of Applicant's DROWNING POOL mark.

INTERROGATORY NO. 3:

Identify the date that YOU contend YOU first used "Drowning Pool" as a mark.

INTERROGATORY NO. 4:

Identify the date that YOU contend YOU first used "Drowning Pool" as a mark in interstate commerce.

INTERROGATORY NO. 5:

Identify all facts YOU contend support YOUR allegation that Applicant Drowning Pool "abandoned" its Drowning Pool mark.

INTERROGATORY NO. 6:

Identify the date that YOU contend Applicant "abandoned" its Drowning Pool mark.

INTERROGATORY NO. 7:

Identify all facts that YOU contend support YOUR allegation that Applicant did not intend to resume use of its Drowning Pool mark.

INTERROGATORY NO. 8:

Identify YOUR total advertising expenditures for the mark "Drowning Pool" for each year the mark has been used.

INTERROGATORY NO. 9:

Identify YOUR total sales in units of any product, recording, merchandise or other item bearing the mark "Drowning Pool" for each year that the mark has been used.

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INTERROGATORY NO. 10:

Identify YOUR total sales in U.S. dollars of any product, recording, merchandise or other item bearing the mark "Drowning Pool" for each year the mark has been used.

INTERROGATORY NO. 11:

Identify the total royalties received by YOU for sales of any licensed product, recording, merchandise or other item bearing the mark "Drowning Pool" for each year the mark has been used.

INTERROGATORY NO. 12:

Identify each PERSON or entity that manufactures any product, recording, merchandise or other item bearing the mark "Drowning Pool" on YOUR behalf.

INTERROGATORY NO. 13:

IDENTIFY Wind-Up Records.

CONFIDENTIAL

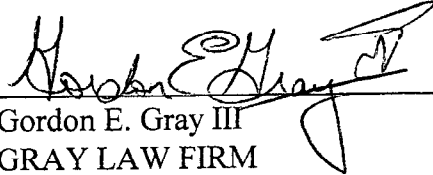
INTERROGATORY NO. 14:

IDENTIFY Jay Baumgardner.

Respectfully submitted,

DROWNING POOL

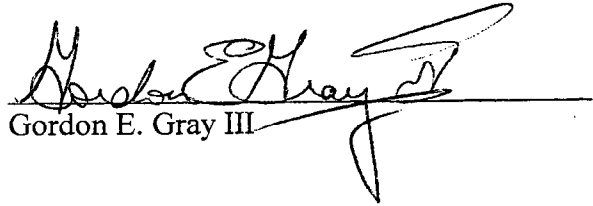
Dated: 4/3/2003

By: 
Gordon E. Gray III
GRAY LAW FIRM
4401 N. Atlantic Ave., Suite 233
Long Beach, CA 90807
Telephone: (562) 984-2020
Fax: (562) 984-2019
Email: geg@grayiplaw.com
Attorney for Applicant

03/14/2003 11:11 AM

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **APPLICANT'S FIRST SET OF INTERROGATORIES** was mailed first class mail, postage prepaid, to: J. Rodgers Lunsford III, Smith, Gambrell & Russell, LLP, 1230 Peachtree Street, N.E., Suite 3100, Promenade II, Atlanta, GA 30309-3592, attorney for the Opposer, on this April 3, 2003.


Gordon E. Gray III

COMMUNICATIONS SECTION

GRAY LAW FIRM

Gordon E. Gray III

PATENTS, TRADEMARKS, COPYRIGHTS
AND RELATED MATTERS

TELEPHONE: (562) 984-2020

FACSIMILE: (562) 984-2019

4401 N. ATLANTIC AVENUE, SUITE 233
LONG BEACH, CALIFORNIA 90807

e-mail: geg@grayiplaw.com

July 15, 2003

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VIA FACSIMILE ONLY (404) 815-3509

Mr. J. Rodgers Lunsford III
SMITH, GAMBRELL & RUSSELL, LLP
Suite 1300, Promenade II
1230 Peachtree St., N.E.
Atlanta, Georgia 30309-3592

Re: Drowning Pool LLC v. Drowning Pool
Our Ref. No.: 108.91

Dear Mr. Lunsford:

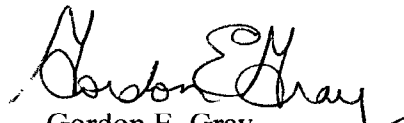
I left a message on your voice mail on July 11 and with you personally on July 14 to contact me. I have not heard back from you nor have you left any messages for me.

Please note that I have not received Opposer's responses to Applicant's first set of discovery requests. They were due on July 7, 2003 by previous agreement of counsel. Accordingly, Opposer's responses are now overdue. Please provide answers and documents responsive to Applicant's first set of document requests and Applicant's first set of interrogatories **without objection** by **July 23, 2003**.

If Opposer's responses and documents are not provided by July 23, 2003, I request a meeting of counsel by teleconference pursuant to TBMP § 523.02 to meet and confer regarding Opposer's failure to respond. I suggest **July 24, 2003 at 11:00 a.m. (Pacific)**. If you are not available at that time, please contact me for an earlier meeting. If you have any questions, please do not hesitate to contact me.

Very truly yours,

Gray Law Firm


Gordon E. Gray

GEG: xox

Gordon Gray

From: Rodgers Lunsford [RLUNSFORD@sgrlaw.com]
Sent: Thursday, July 24, 2003 11:40 AM
To: geg@grayiplaw.com
Subject: RE: Drowning Pool Protective Order

Thanks. I'm in the swamp with a bunch of alligators, but will call you as soon as I can. It may be late this afternoon or early tomorrow morning your time.

J. Rodgers Lunsford III
Smith, Gambrell & Russell
Suite 3100 Promenade II
1230 Peachtree Street, N.E.
Atlanta, Georgia 30309-3592
404-815-3628 direct phone
404-685-6928 direct fax
rlunsford@sgrlaw.com

3

>>> "Gordon Gray" <geg@grayiplaw.com> 07/24/03 01:50PM >>>
A redline copy of the protective order is enclosed with my proposed changes.

-----Original Message-----
From: Rodgers Lunsford [mailto:RLUNSFORD@sgrlaw.com]
Sent: Monday, July 21, 2003 11:07 AM
To: geg@grayiplaw.com
Subject: Drowning Pool Protective Order

Per our telephone conversation of Friday. I will send you under separate cover a proposed revision of the discovery and trial dates.

J. Rodgers Lunsford III
Smith, Gambrell & Russell
Suite 3100 Promenade II
1230 Peachtree Street, N.E.
Atlanta, Georgia 30309-3592
404-815-3628 direct phone
404-685-6928 direct fax
rlunsford@sgrlaw.com

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09/17/2003 11:00 AM

UNITED STATES DEPARTMENT OF
COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: January 13, 2003

Opposition No 91154398
Serial No. 76287792

4

ADAM ELESH
DROWNING POOL
54 FEATHER RDG
MISSION VIEJO, CA 92692-5184

Drowning Pool LLC

v.

Drowning Pool

J. RODGERS LUNSFORD III
SMITH, GAMBRELL & RUSSELL, LLP
1230 PEACHTREE, ST., N.E., SUITE 3100, PROMENADE II
ATLANTA, GA 30309-3592

Sandra Thompson, Legal Assistant

A notice of opposition to the registration sought in the above-identified application has been filed. A copy of the notice is attached.

ANSWER IS DUE FORTY DAYS after the mailing date hereof.
(See Patent and Trademark Rule 1.7 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that became effective October 9, 1998. See Notice of Final Rulemaking published in the *Official Gazette* on September 29, 1998 at 1214 TMOG 145. Slight corrections to the rules, resulting in a correction notice, were published in the *Official Gazette* on October 20, 1998 at 1215 TMOG 64.

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A copy of the recent amendments to the Trademark Rules, as well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), is available at <http://www.uspto.gov>.

Discovery and testimony periods are set as follows:

Discovery period to open: February 02, 2003

Discovery period to close: August 01, 2003

30-day testimony period for party in position of plaintiff to close: October 30, 2003

30-day testimony period for party in position of defendant to close: December 29, 2003

15-day rebuttal testimony period for plaintiff to close: February 12, 2004

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "*Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board*," 1235 TMOG 68 (June 20, 2000). A hard copy of the *Official Gazette* containing this notice is available for a fee from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (Telephone (202) 512-1800). The notice is also available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

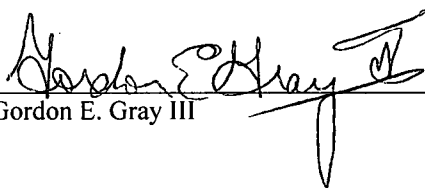
COPIES OF THIS DOCUMENT ARE AVAILABLE TO THE PUBLIC

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

09/15/2003 TTAB
09/15/2003 TTAB

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **APPLICANT'S MOTION TO COMPEL RESPONSES TO FIRST SET OF DISCOVERY REQUESTS** was mailed first class mail, postage prepaid, to: J. Rodgers Lunsford III, Smith, Gambrell & Russell, LLP, 1230 Peachtree Street, N.E., Suite 3100, Promenade II, Atlanta, GA 30309-3592, attorney for the Opposer, on this August 4, 2003.

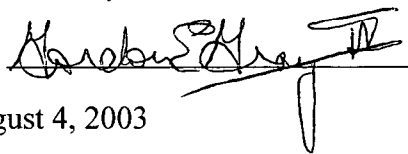


Gordon E. Gray III

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Box TTAB, Arlington, Virginia 22202-3513 on August 4, 2003.

By: Gordon E. Gray III

Signature: 

Date: August 4, 2003