

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

In the matter of Trademark Application Serial No. 78/095,659

Filed: November 29, 2001

For the mark: SQRAT

Published in the *Official Gazette* on December 17, 2002

**TTAB**

FOX ENTERTAINMENT GROUP, INC.  
and TWENTIETH CENTURY FOX FILM  
CORPORATION,

Opposers,

-against-

IVY SILBERSTEIN,

Applicant.

Opposition No. 91156138

**APPLICANT'S BRIEF IN OPPOSITION TO OPPOSERS'  
MOTION FOR SUMMARY JUDGMENT AND MOTION TO  
AMEND BASIS OF APPLICANT'S APPLICATION FROM  
15 U.S.C. § 1051(a) TO 15 U.S.C. § 1051(b)**

Applicant Ivy Silberstein respectfully moves this Board to amend Trademark Application Serial No. 78/095,659, which is subject to the current opposition proceeding, from an actual use basis under 15 U.S.C. Section 1051(a) to an intent-to-use basis under 15 U.S.C. Section 1051(b). In the event that this request to amend to a 1051(b) basis is granted, Applicant consents to judgment with respect to its original 1051(a) basis application. This request is timely since it is being made before trial.

Applicant draws the Board's attention to *International Harvester Co. v. International Telephone and Telegraph Corp.*, 208 U.S.P.Q. 940, 941 (TTAB 1980) and *Pro-Cuts v. Schilz-Price*

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**07-22-2008**

*Enterprises, Inc.*, 27 U.S.P.Q. 2d 1224 (TTAB 1993). In each of those cases, amendments to applications, which were subject to proceedings before the Board, were permitted before trial where applicant had conditionally consented to judgment against itself with respect to its original application in the form prior to amendment. For the same reason, Applicant's present request to amend the filing basis of its application should be granted.

Applicant respectfully notes that if this request to amend the application is granted, all of the issues raised in Opposers' Summary Judgment Brief (which all concern the matter of actual use) will thereby be rendered moot.

#### CONCLUSION

For the reasons set forth above, the Board should grant Applicant's Motion to Amend, and hold the summary judgment brief of Opposers to be moot with respect to the amended application.\*

Dated: July 23, 2008

Respectfully submitted,



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David A. Einhorn  
**BAKER & HOSTETLER LLP**  
45 Rockefeller Plaza  
New York, New York 10111  
Tel: 212.589.4200  
Fax: 212.589.4201

Attorneys for Applicant  
IVY SILBERSTEIN

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\* In the event that this Motion to Amend is not granted, Applicant does not consent to summary judgment and requests additional time in which to oppose Opposers' Motion.

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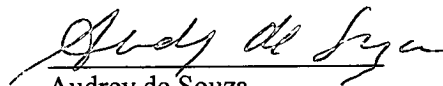
IVY SILBERSTEIN,

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**CERTIFICATE OF MAILING**

I hereby certify that this APPLICANT'S BRIEF IN OPPOSITION TO OPPOSERS' MOTION FOR SUMMARY JUDGMENT AND MOTION TO AMEND BASIS OF APPLICANT'S APPLICATION FROM 15 U.S.C. § 1051(A) TO 15 U.S.C. § 1051(B) is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" pursuant to 37 C.F.R. § 1.10 on July 22, 2008 and is addressed to the Commissioner for Trademarks, Trademark Trial and Appeal Board, Box: TTAB No Fee, 2900 Crystal Drive, Arlington, VA 22202-3513.

  
Audrey de Souza

Express Mail No.: EM 199391449 US

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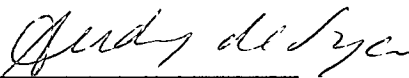
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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the APPLICANT'S BRIEF IN OPPOSITION TO OPPOSERS' MOTION FOR SUMMARY JUDGMENT AND MOTION TO AMEND BASIS OF APPLICANT'S APPLICATION FROM 15 U.S.C. § 1051 (A) to 15 U.S.C. § 1051(B) was served by upon counsel for Opposers by depositing the same in the U.S. Mail, first-class postage prepaid, on July 22, 2008, in an envelope addressed to:

Jacques Rimokh, Esq.  
Jonathan Zavin, Esq.  
Loeb & Loeb, LLP  
345 Park Avenue, 18<sup>th</sup> Floor  
New York, New York 10154

  
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Audrey de Souza