

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

In the Matter of Application Serial No, 78/095,659
Filed: November 30, 2001
For the mark: SQRAT
Published in the *Official Gazette*, December 17, 2002

TTAB

FOX ENTERTAINMENT GROUP, INC.)
and TWENTIETH CENTURY FOX FILM)
CORPORATION)
Opposer,)
- against -)
IVY SILBERSTEIN,)
Applicant.)

Consolidated Opposition


Opposition No. 91156138
Parent No.: 91,156005
Child No.: 91,156138

**REPLY BRIEF IN SUPPORT OF APPLICANT'S CROSS-MOTION
TO DISMISS OPPOSERS' CAUSE OF ACTION FOR FRAUD AND
TO COMPEL**

Applicant Ivy Silberstein submits this reply brief in further support of Applicant's
Motions to Dismiss Opposers' Cause of Action for Fraud and to Compel.

I. APPLICANT'S MOTIONS ARE IN COMPLIANCE WITH THE SUSPENSION
ORDER

Contrary to Opposers' contentions, Applicant's motions are germane to Opposers'
pending motion to compel and thus in compliance with the suspension order. Opposers'
motion to compel refers to document requests which have been objected to by Applicant,
since they relate to an inadequately and improperly pled cause of action for fraud. The
motion to dismiss directly addresses that inadequately pled cause of action. Further,
Applicant's cross-motion to compel is germane to the overall discovery dispute between the
parties which Opposers first presented to the Board for resolution.


04-26-2010

II. APPLICANT'S CROSS-MOTION IS TIMELY

Applicant's cross-motion to dismiss is based upon the recent Federal Circuit decision of In Re Bose, 580 F.3d 1240 (Fed. Cir. 2009) and its progeny, particularly Asia and Western Classics, B.V. v. Lynn Selker, 92 USPQ2d 1478 (TTAB 2009). Applicant's answers in the two consolidated opposition proceedings, Nos. 91156138 and 91156005, were due to be filed and were filed on June 6, 2003 and May 27, 2003, respectively. However, In Re Bose was not decided until August 31, 2009 and Asian and Western Classics was not decided until October 22, 2009. Thus, motions to dismiss could not have been filed in lieu of answers since the current law on pleading standards for fraud did not apply at that time.

Notwithstanding the above, Applicant alternatively characterizes the cross-motion to dismiss as a Cross-Motion for Judgment on the Pleadings.

III. OPPOSERS ARE STONEWALLING ALL DISCOVERY EFFORTS OF APPLICANT

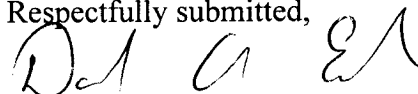
Fox has been attempting to abuse its position as a mammoth corporation in litigation with an individual by failing to produce a single document in response to Applicant's document requests. As can be seen by a review of Opposers' objections, it is not true that Opposers have represented that it has no documents responsive to each of the requests (as it now alleges on p. 5 of its brief in the form of attorney argument). Instead, Fox has asserted a myriad of objections, including objections based upon attorney-client privilege. Further, Fox has improperly declined to produce any privilege log with respect to those documents allegedly withheld on the basis of attorney-client privilege.

CONCLUSION

For the foregoing reasons and for those reasons set forth in Applicant's brief in support of its Cross Motions to Dismiss and to Compel, Applicant's Cross Motion to Dismiss Opposers' Causes of Action for Fraud (or, alternatively, for judgment on the pleadings) and Applicant's Cross Motion to Compel should be granted.

Date: April 26, 2010

Respectfully submitted,



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CERTIFICATE OF EXPRESS MAILING

I hereby certify that this REPLY BRIEF IN SUPPORT OF APPLICANT'S MOTIONS TO DISMISS OPPOSERS' CAUSE OF ACTION FOR FRAUD AND TO COMPEL is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" pursuant to 37 C.F.R. § 1.10 addressed to the Commissioner for Trademarks, Trademark Trial and Appeal Board, Box: TTAB No Fee, 2900 Crystal Drive, Arlington, VA 22202-3513 on April 26, 2010.


Audrey de Souza

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the REPLY BRIEF IN SUPPORT OF APPLICANT'S MOTIONS TO DISMISS OPPOSERS' CAUSE OF ACTION FOR FRAUD AND TO COMPEL was served upon counsel for Applicant by depositing the same in the U.S. Mail, first-class postage prepaid, on April 26, 2010, in an envelope addressed to:

Jonathan Zavin, Esq.
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Audrey de Souza