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UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3514\

omelko

Mailed: February 23, 2004

Opposition No. 91156618

Yoshida Metal Industry Co.,  
Ltd

v.

Global Decor, Inc.

Before Cissel, Holtzman and Drost,  
Administrative Trademark Judges.

By the Board:

This case now comes up on applicant's motion (filed September 2, 2003) for summary judgment. In response thereto, opposer has filed a motion for discovery pursuant to Fed. R. Civ. P. 56(f), which is contested by applicant. For purposes of this order the Board presumes the parties' familiarity with the pleadings, and the arguments and evidence submitted with regard to the summary judgment motion and the Fed. R. Civ. P. 56(f) motion for discovery.

Applicant's motion for summary judgment is denied. Applicant has the burden of demonstrating the absence of genuine issues of material fact and applicant's entitlement to summary judgment as a matter of law. At a minimum, applicant has failed to show the absence of a genuine issue

as to, for example, the commercial impressions of the marks.<sup>1</sup> Opposer's motion for additional discovery under Fed. R. Civ. P. 56(f) is denied as moot.

Proceedings are resumed. Opposer's time to answer applicant's counterclaim and the periods for discovery and trial dates are reset in accordance with opposer's consented motion to extend filed February 4, 2004.

IN EACH INSTANCE, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. 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.

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<sup>1</sup> Although we have only mentioned one genuine issue of material fact in this decision, that is not to say that there are not other factual issues that may be disputed. The parties should note that evidence submitted in support of or in opposition to a motion for summary judgment is of record only for consideration of that motion. Any such evidence to be considered at final hearing must be properly introduced in evidence during the appropriate trial period. See, for example, *Levi Strauss & Co. v. R. Joseph Sportswear Inc.*, 28 USPQ2d 1464 (TTAB 1993).