UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3514

Taylor

Mailed: June 25, 2004

Opposition No. 91156650

Altera Corporation

v.

Alera Technologies, LLC

Before Simms, Chapman and Holtzman,
Administrative Trademark Judges.

By the Board:

This case now comes up for consideration of applicant's motion for summary judgment on the grounds that there is no likelihood of confusion between the parties' respective marks and that applicant's mark does not dilute the distinctive quality of opposer's pleaded marks. Because the Board presumes the parties' knowledge of their specific marks and goods and services involved herein, that information will not be set forth.

Applicant argues that in view of the dissimilarity of the marks and the differences in the goods listed in the parties' respective applications and registrations, there are no additional facts which could be uncovered during trial of this matter and, therefore, the Board should grant summary judgment in applicant's favor. In support of its motion for summary judgment, applicant submitted only the

declaration of its attorney regarding the notice of publication of its involved mark and status information from the TARR database of the USPTO concerning applicant's involved mark and opposer's pleaded registrations.

In response, opposer argues that applicant has not met its burden on summary judgment inasmuch as applicant bases its motion for summary judgment on the "bald conclusion" that the marks and the goods and services at issue differ; and that there remain genuine issues of material fact for trial, e.g., the commercial impression of the marks, and the relatedness of the goods and services.[1]

Applicant, as the party moving for summary judgment, has the burden of demonstrating the absence of any genuine issue of material fact, and that it is entitled to judgment as a matter of law. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548 (1986). The evidence must be viewed in

[1] Opposer has extensively argued that summary judgment should be denied due to applicant's failure to respond to opposer's discovery requests, those responses being due the day after applicant filed its motion for summary judgment. We note, however, that opposer's concern regarding its unanswered discovery requests is irrelevant to the motion for summary judgment, unless opposer had moved for discovery under Fed. R. Civ. P. 56(f).

Additionally, opposer argues (in its brief in opposition to applicant's motion for summary judgment) that the Board should compel applicant to respond to the outstanding discovery requests. In that regard, we consider applicant's filing of the motion for summary judgment to have effectively tolled the running of this opposition for all matters not germane to the motion for summary judgment. See generally TBMP § 528.03 (2d. edition, rev. 1 March 2004). Accordingly, opposer's "motion" to compel is denied as premature.

a light favorable to the non-movant, and all justifiable inferences are to be drawn in the non-movant's favor. *See Opryland USA, Inc. v. Great American Music Show, Inc.,* 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1993).

Upon consideration of the arguments and evidence presented by the parties under the summary judgment guidelines set forth above, and drawing all reasonable inferences in favor of opposer, the nonmoving party, we find that applicant has not met its burden of proof to obtain summary judgment. In particular, applicant's self-serving statement that its mark is so dissimilar in relation to opposer's pleaded marks that no reasonable consumer would ever confuse applicant's mark with opposer's marks is insufficient to establish that (i) there are no genuine issues of material fact remaining for trial, as to either the issues involved in likelihood of confusion or dilution, and (ii) it is entitled to judgment as a matter of law. We find, at a minimum, there exist genuine issues of material fact as to the commercial impression of the marks and the relatedness of the goods and services.[2] *See* Fed. R. Civ. P. 56.

Accordingly, applicant's motion for summary judgment is denied.

[2] The fact that we have identified and discussed only a few issues of material fact as sufficient bases for denying the motion for summary judgment should not be construed as a finding that these are necessarily the only issues that remain for trial.

Applicant is allowed until **TWENTY DAYS** from the mailing date of this order to respond to opposer's first set of requests for admissions, first set of requests for production of documents and first set of interrogatories.[3]

Discovery having closed prior to the filing of applicant's motion for summary judgment, trial dates only are reset below.

Discovery period to close:	CLOSED
30-day testimony period for party in Position of plaintiff to close:	September 20, 2004
30-day testimony period for party in Position of defendant to close:	November 19, 2004
15-day rebuttal testimony period to close:	January 3, 2005

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.l25.

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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[3] We hasten to add that this is merely a resetting of the time, stayed by the filing of applicant's motion for summary judgment, for applicant to respond to opposer's previously served discovery requests. In the event of a discovery dispute, the remedy lies in a timely motion to compel, filed only after a good faith effort by the parties to resolve their dispute.