

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: January 23, 2006

Opposition No. 91157867

SONY COMPUTER ENTERTAINMENT
AMERICA INC

v.

Frosty Treats, Inc.

Linda Skoro, Interlocutory Attorney

On August 5, 2005, opposer informed the Board that the civil action that served as the basis to suspend proceedings in this case has been finally decided by the U.S. Court of Appeals for the 8th Circuit.¹ The outcome of the civil action resulted in a finding, inter alia, that, based on the undisputed facts of the case, that applicant herein had not established that it had a protectible trademark. See page 3 of the slip opinion.

In light of these findings and in light of the fact that the grounds opposer stated in this proceeding are the same as those affirmed by the Eighth Circuit, applicant is allowed until thirty days from the mailing date of this order to show cause why judgment should not be entered on opposer's behalf.

¹ The 8th Circuit considered the lower court's granting of summary judgment in favor of opposer, finding applicant's use of "Frosty Treats" was not recognized as a trademark, had no secondary meaning, did not create a triable issue as to a likelihood of confusion and there was no dilution.

In the event applicant fails to respond to this order to show cause, the Board will treat the district court decision, as affirmed by the court of appeals, as a decision on the merits, and a judgment granting the opposition and refusing registration to applicant with prejudice will be entered.

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