

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

NEW YORK FOOTBALL GIANTS INC. and
NFL PROPERTIES LLC,

Opposers,

Opposition No. 91/158,663

-against-

GIANT, INC.,

Applicant.

**OPPOSERS' REPLY MEMORANDUM IN FURTHER SUPPORT OF THEIR
COMBINED MOTION TO COMPEL DISCOVERY,
TEST THE SUFFICIENCY OF APPLICANT'S RESPONSES TO
ADMISSION REQUESTS, AND STAY PROCEEDINGS**

On June 14, 2004, Opposers New York Football Giants, Inc. ("Giants") and NFL Properties LLC ("NFL") (collectively "Opposers") filed with the Trademark Trial and Appeal Board (the "Board") their Combined Motion To Compel Discovery, Test The Sufficiency Of Applicant's Responses To Admission Requests, And Stay Proceedings ("Opposers' Motion"). On July 3, 2004, Applicant filed its motion in opposition ("Applicant's Opposition Motion"). Opposers now reply to Applicant's Opposition.

STATEMENT

Applicant's Opposition Motion was received by Opposers on July 6, 2004. In Applicant's Opposition Motion, Applicant states that it was concurrently serving its supplemental responses to Opposers' First Set of Interrogatories and Document Requests, including the production of responsive documents. (Appl. Opp. at 2, 3-5). Because no such documents were received with Applicant's Opposition Motion, Opposers' counsel telephoned

Applicant's counsel seeking explanation for the deficiency in production. Applicant's counsel responded on July 7, 2004, claiming that the box of documents intended for Opposers had been mistakenly sent to the Board. Applicant then served its supplemental responses to Opposers' First Set of Interrogatories and Document Requests and sent a separate set of responsive documents to Opposers' counsel, which was received on July 9, 2004.¹

Clearly, Applicant complied only when faced with Opposers' Motion and the imminent action of the Board. Still, in light of Applicant's supplemental responses and pursuant to 37 C.F.R. § 2.120(e) and T.B.M.P. § 523.02, Opposers hereby withdraw their motion as to the request for an order of the Board (i) requiring Applicant to supplement its answers to all interrogatories contained within Opposers' First Set of Interrogatories; and (ii) requiring Applicant to produce all documents and things requested in Opposers' First Request For Documents and Things and to supplement its written responses thereto. However, Opposers maintain the remainder of Opposers' Motion, and continue to move the Board for an order: (1) staying this proceeding pending resolution of Opposers' Motion;² (2) ruling, in light of Applicant's deficient responses to Opposers' Admission Requests, that the Admission Requests be deemed admitted, or requiring Applicant to amend its responses; (3) issuing a Scheduling Order in which the discovery period remains closed (as of June 20, 2004), but affording

¹ None of these documents were bates stamped, numbered, labeled, or otherwise in compliance with Federal Rule of Civil Procedure 34(b) (requiring produced documents to be "organize[d] and label[ed] . . . to correspond with the categories in the request.")

² As is evident from Applicant's Opposition Motion, neither side objects to a stay of proceedings pending resolution of the instant motion. (Appl. Opp. at 2 ("Applicant does not object to the stay.").)

Opposers a reasonable time to now conduct follow-up discovery; and (4) awarding further relief deemed just and proper by the Board, including an order of default judgment.

ARGUMENT

I. Applicant Fails To Refute A Single Argument Made In Opposers' Motion To Test The Sufficiency Of Applicant's Responses To Admission Requests, And Applicant's Deficient Responses Should Be Deemed Admitted

Applicant attempts in a single paragraph to justify its initial responses to Opposers' Admission Requests, yet completely misses the mark. As noted in Opposers' Motion, Rule 36 of the Federal Rules of Civil Procedure sets forth the parameters for responding to requests for admissions. Applicant has utterly failed to adhere to these standards, as is evidenced by the nature of the deficiencies in Applicant's initial responses, and Applicant's continued failure, or inability, to support said responses. Notably, Applicant's Opposition Motion is void of citation to any legal authority, and at no point negates, or even addresses, Opposers' arguments, each of which, by contrast, is supported by decisions from the Board.

Accordingly, the Board should enter an Order deeming Opposers' Admission Requests Nos. 2, 3, 5, and 6 admitted, or, alternatively, directing Applicant to serve amended answers to these Requests for Admission.

II. Given Applicant's Late-Filed Supplemental Responses, Opposers Should Be Given Additional Time to Conduct Follow-Up Discovery

As stated supra, Applicant has finally served supplemental responses to Opposers' First Set of Interrogatories and Document Requests, including the production of responsive documents. Applicant's dilatory response—made two weeks after the close of discovery in the instant proceeding and only when faced with Opposers' Motion and the imminent action of the Board—should not allow Applicant to escape its responsibilities under the rules of discovery in

Board actions. "A party may not, by limiting its own discovery and/or presentation of evidence on the case, thereby restrict another party's discovery in any way." T.B.M.P. § 402.01. Having finally received the responses they repeatedly sought over the course of three months, Opposers should now be given the opportunity to conduct follow-up discovery. Applicant should not be allowed to use its failure to timely respond to Opposers' legitimate discovery requests as a shield to Opposers' further discovery. Therefore, Opposers request the issuance of a Scheduling Order which recognizes that the discovery period in the instant matter closed on June 20, 2004, but that also affords Opposers a reasonable time to conduct further discovery as to those supplemental responses provided by Applicant along with Applicant's Opposition Motion. Given that the original response due date for Opposers' discovery requests was May 4, 2004 (more than six weeks before the close of discovery), Opposers request at least six weeks from the date of decision regarding the instant motion in which to conduct this follow-up discovery.

III. Sanctions Against Applicant, To Include Default Judgment, Are Now Appropriate

Opposers' efforts properly to police their valuable trademarks have been repeatedly hindered by Applicant's dilatory tactics. The record is clear that Opposers have more than satisfied their obligation to confer with Applicant regarding discovery disputes. (See Affidavit of Sean D. Burke.) Given Applicant's failure to correct or otherwise amend the admissions sought by Opposers' Admission Requests, and to prevent further injury to Opposers as result of Applicant's objectionable methods, the Board should now intervene and sanction Applicant by issuing a default judgment.

CONCLUSION

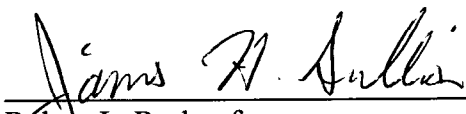
For all of the reasons set forth above, and in Opposers' Motion, Opposers request that the Board issue an order: (i) staying this proceeding pending resolution of Opposers' Motion; (ii)

ruling, in light of Applicant's continued failure to amend its responses to Opposers' Admission Requests, the deficient Admission Requests be deemed admitted, or, alternatively, requiring Applicant to amend its responses; (iii) as requested in Opposers' Motion, issuing a Scheduling Order wherein the discovery period is closed, but affording Opposers a reasonable time after resolution of the instant motion to conduct follow-up discovery; and, (iv) awarding any additional relief deemed proper, including an order of default judgment.

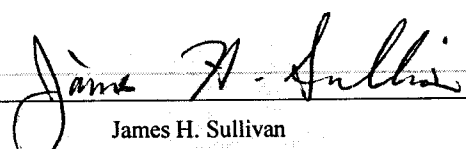
Dated: July 22, 2004
New York, New York

Respectfully submitted,

WHITE & CASE LLP

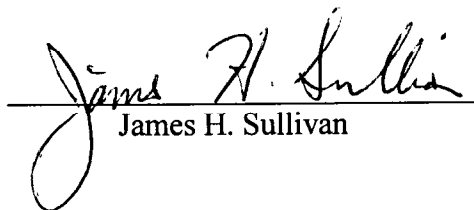
By: 
Robert L. Raskopf
Claudia T. Bogdanos
James H. Sullivan
1155 Avenue of the Americas
New York, New York 10036-2787
Tel: 212-819-8200

Attorneys for Opposers New York Football
Giants Inc. and NFL Properties LLC.

<p align="center">CERTIFICATE OF MAILING BY "EXPRESS MAIL"</p> <p>"Express Mail" mailing label number: EL914828145US</p> <p>I hereby certify that this document and instructions for payment of fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service in an envelope addressed to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514 on this 22nd day of July 2004.</p> <p>Signature:  James H. Sullivan</p>
--

CERTIFICATE OF SERVICE

I certify that on July 22, 2004, I caused to be served a copy of Opposers' Reply Memorandum In Further Support of Their Combined Motion To Compel Discovery, Test The Sufficiency Of Applicant's Responses To Admission Requests And Stay Proceedings via Express Mail overnight delivery to Christie Gaumer, attorney for Applicant, whose address is 900 Wilshire Boulevard, Suite 1512, Los Angeles, CA 90017.


James H. Sullivan

TTAB

WHITE & CASE

White & Case LLP
1155 Avenue of the Americas
New York, New York 10036-2787

Tel + 1 212 819 8200
Fax + 1 212 354 8113
www.whitecase.com

Direct Dial + 1 212 819 8571 jsullivan@whitecase.com

July 22, 2004

VIA EXPRESS MAIL EL 914828128 US

Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3514



07-23-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #66

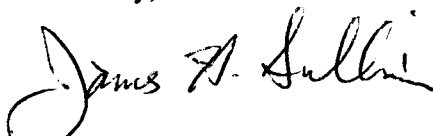
Re: Opposition No. 91/158,663 by New York Football Giants, Inc. and NFL Properties LLC
against Giant, Inc.; Application Serial Number 76/112,500; Mark: GIANT

To Whom It May Concern:

Enclosed please find Opposers' Reply Memorandum in Further Support of Their Motion to Compel Discovery, Test the Sufficiency of Applicant's Responses to Admission Requests, and Stay Proceedings, certificate of service, and certificate of mailing in the above-referenced matter.

Please stamp and return the enclosed postcard to acknowledge receipt for our files. Please also conduct all correspondence with regard to the above-referenced proceeding with the undersigned.

Sincerely,


James H. Sullivan

Enclosures

cc: Anastasia Danias, Esq.
Christie Gaumer, Esq.
Robert L. Raskopf, Esq.
Claudia T. Bogdanos, Esq.

ALMATY ANKARA BANGKOK BEIJING BERLIN BRATISLAVA BRUSSELS BUDAPEST DRESDEN DÜSSELDORF FRANKFURT HAMBURG HELSINKI
HO CHI MINH CITY HONG KONG ISTANBUL JOHANNESBURG LONDON LOS ANGELES MEXICO CITY MIAMI MILAN MOSCOW MUMBAI NEW YORK PALO ALTO
PARIS PRAGUE RIYADH ROME SAN FRANCISCO SÃO PAULO SHANGHAI SINGAPORE STOCKHOLM TOKYO WARSAW WASHINGTON, DC