

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

csq

Mailed: March 3, 2005

Opposition No. **91158743**

Golden Gate Fireworks, Inc.

v.

American Promotional Events,
Inc.

On September 23, 2004, the Board issued an order denying applicant's motion to dismiss but granting applicant's motion for more definite statement. The Board allowed opposer time to amend the notice of opposition to clarify whether opposer is relying on Section 2(a) or Section 2(e)(1) of the Trademark Act and to omit any material not relevant to those claims that focuses on applicant's goods.

On October 22, 2004, opposer filed its first amended notice of opposition, and on November 16, 2004, applicant filed its motion to dismiss opposer's first amended notice of opposition.

In support of its motion, applicant asserts that opposer did not comply with the Board's September 23, 2004 order requiring that opposer clarify its allegations in the notice of opposition with respect to deceptiveness; that applicant's amended notice of opposition does not cure the

deficiencies noted by the Board since the original notice and the amended notice "contain the identical conclusory allegations"; and that the allegations in paragraphs 11(a) and 11(b) should either be dismissed or stricken.

In response, opposer filed its second amended pleading. Opposer asserts that the second amended pleading corrects the deficiencies pointed out by the Board in the order dated September 23, 2004; that the second amended pleading corrects the deficiencies applicant has complained of in its second motion to dismiss; that "the specifics of [a]pplicant's deceptiveness under Section 2(a) are now concretely revealed to [a]pplicant"; and that since "[a]pplicant has not filed an answer . . . it will not be prejudiced."

Opposer's second amended notice of opposition corrects the defects in the first amended notice of opposition by properly alleging a claim under Section 2(a). In view thereof, applicant's motion to dismiss the amended notice of opposition is moot, and opposer's second amended notice of opposition is accepted and entered into the record. See Fed. R. Civ. P. 15(a); TBMP Sections 503.03 and 507.02. (2d Ed. Rev. Mar. 2004)

Applicant is allowed until THIRTY DAYS from the mailing date of this order to file its answer to the second amended notice of opposition.

Discovery and trial dates are reset as follows:

DISCOVERY PERIOD TO CLOSE:	September 1, 2005
30-day testimony period for party in position of plaintiff to close:	November 30, 2005
30-day testimony period for party in position of defendant to close:	January 29, 2006
15-day rebuttal testimony period for party in position of plaintiff to close:	March 15, 2006

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.

***By the Trademark Trial
and Appeal Board***