

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

Mailed: December 6, 2005

Opposition No. 91161439

Loews Cineplex Theatres, Inc

v.

RKO Pictures, Inc.

**Thomas W. Wellington,
Interlocutory Attorney:**

This case now comes up on opposer's motion (filed July 7, 2005) to suspend this opposition proceeding in order to allow the parties time to conduct settlement negotiations.

In its motion, opposer states that the parties are "actively engaged in negotiations to settle the trademark dispute between the parties" and that "additional time is required to come to an agreement because Opposer has become involved in a possible merger which has made it difficult for Opposer's officers to devote attention to the resolution of this matter in the short term." Opposer further stated in its motion that counsel for opposer was "unable to reach counsel for applicant to obtain its consent to the suspension, but opposer believes that applicant would not object."

Applicant has opposed this motion. Applicant states that opposer has not shown good cause motion and the motion is based upon "a key misrepresentation of fact." Specifically, applicant disputes opposer's statement that there were on-going settlement negotiations prior to the filing of the motion because opposer "failed to discuss, or even to contact, [applicant] since March 2005." Applicant states that "opposer has failed to engage in any settlement discussions with Respondent that would provide good cause for the requested suspension." Applicant also argues that opposer's representation that applicant would "not object" to the motion for suspension is without basis because the motion was mailed to the Board one day after opposer attempted to contact applicant's attorneys via email; that said representation is even "more unreasonable" because "opposer had not contacted applicant since March 2005, four months prior to filing the motion."

In a reply brief, opposer states that "although [opposer] may not have communicated with [applicant's] current counsel since March [2005], Opposer has engaged in settlement negotiations with previous counsel for Applicant." Opposer also states that it had not received any communications from applicant since March 5, 2005. And, opposer concluded that "based on its last communications with Applicant's current counsel, it was Opposer's

understanding that Opposer was to prepare a proposed settlement agreement"; that counsel for opposer did prepare such a settlement agreement and "forwarded it to the principals of opposer and had yet to receive a response."

Based on the information before us, we conclude that that good cause does not exist for suspending proceedings. Essentially, opposer has argued that it was under the impression that the parties were in a settlement negotiation mode at the time it filed its motion. Applicant has rejected this contention. The parties are clearly not in agreement as to whether there are any ongoing meaningful settlement negotiations. Generally, the Board will only grant a motion to suspend to allow time for settlement negotiatons if the motion is filed with the other party's consent. See TBMP § 510.03(a) (2d ed. rev. 2004). Moreover, even if the Board were to suspend this proceeding, it would be subject to the right of either party to request resumption.

In view of the above, opposer's motion to suspend is denied. Trademark Rule 2.117(c).

Discovery has closed. Because opposer's motion to suspend contained a certificate of mailing of July 7, 2005 and opposer's testimony period was scheduled to close on July 8, 2005, opposer's rescheduled testimony period (set forth below) is for only two days.

THE PERIOD FOR DISCOVERY TO CLOSE: CLOSED

Two (2) day testimony period for party
in position of plaintiff to close: January 9, 2005

Thirty (30) day testimony period
for party in position of defendant
to close: March 8, 2006

Fifteen (15) day rebuttal testimony
period to close: April 24, 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.

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