

ESTTA Tracking number: **ESTTA223465**

Filing date: **07/10/2008**

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

Proceeding	91182999
Party	Plaintiff Guthy-Renker Corporation
Correspondence Address	Daniel M. Cislo Cislo & Thomas LLP 1333 2nd Street, Suite 500 Santa Monica, CA 90401-4110 UNITED STATES dan@cislo.com
Submission	Reply in Support of Motion
Filer's Name	Daniel M. Cislo
Filer's e-mail	dan@cislo.com, ttab@cislo.com, sarah@cislo.com
Signature	/Daniel M. Cislo/
Date	07/10/2008
Attachments	Opposer's Reply in Support of Motion for Sanctions.PDF ( 4 pages )(269279 bytes ) Declaration of Sarah A. Brown in Support thereof.PDF ( 4 pages )(254252 bytes )

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

---

**IN THE MATTER OF APPLICATION SERIAL NOS.  
77/200,216 AND 77/199,725  
BOTH PUBLISHED IN THE OFFICIAL GAZETTE ON  
NOVEMBER 20, 2007**

---

GUTHY-RENKER CORPORATION, a  
Delaware corporation,

OPPOSER,

vs.

MICHAEL BOYD., an Individual,

APPLICANT.

) **OPPOSITION NO. 91182999**

)

)

) **OPPOSER'S REPLY IN SUPPORT OF**

) **MOTION FOR SANCTIONS RE**

) **APPLICANT'S FAILURE TO**

) **COMMUNICATE AND PARTICIPATE**

) **IN DISCOVERY CONFERENCE**

) **PURSUANT TO §§2.120(2) , 2.120(g);**

) **DECLARATION OF SARAH A. BROWN**

) **IN SUPPORT THEREOF**

---

Opposer, GUTHY-RENKER CORPORATION, ("Guthy-Renker"), files this Reply in support of its Motion for Sanctions re Applicant's Failure to Communicate and Participate in Discovery Conference ("Motion"). Opposer believes that this Reply is necessary to clarify the record and that the relief requested in its Motion is justified and respectfully requests that the Board consider this Reply and grant Opposer's Motion.

In its opposition to the Motion, Applicant's only defense is that "the parties have not had the opportunity to confer regarding discovery" due to "an apparent misunderstanding or miscommunication."

There has been no misunderstanding or miscommunication between the parties. Mr. Kroll is the attorney of record for the application at issue in this proceeding and correspondence regarding the discovery conference for this proceeding was sent to Mr. Kroll as set forth in Opposer's Motion. Opposer received no notice that Mr. Schindler claimed to be the attorney of record for this proceeding until June 9, 2008, well after the Motion was filed and well after the due date for the discovery conference (May 23, 2008). See, Brown Decl., ¶2, 4. In addition, although Mr. Schindler signed the Answer, Mr. Kroll's name and address are listed as the only Attorney contact information in Applicant's Answer. See, Brown Decl., ¶3, Exhibit A. Also, it is reasonable to infer that Mr. Schindler and Mr. Kroll would have communicated with each other regarding Opposer's correspondence pertaining to this matter.

Moreover, it appears that Applicant did not properly serve Opposer with its Answer by mail as required by 37 C.F.R. §2.119(a), (b) and TBMP §113.<sup>1</sup> In addition, as noted, the Answer, which was sent to Opposer by e-mail, was received by Opposer on June 9, 2008. Opposer has not consented to service by e-mail. Brown Decl., ¶4.

In light of Applicant's failure to comply with Trademark Rule 2.120, Opposer respectfully requests that the Board grant its Motion and extend Opposer's discovery period by the number of days past the deadline of May 23, 2008 until Applicant participates in a discovery conference with Opposer, or that the Board grant other relief as it may deem just and proper.

---

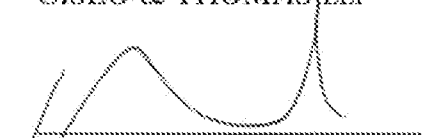
<sup>1</sup> Although Applicant's proof of service attached to its answer states that the answer was served by electronic and First Class Mail upon Opposer on April 23, 2008, Opposer did not receive Applicant's answer by electronic mail until June 9, 2008, and the answer was not received by Opposer's Counsel by First Class Mail or any of the other methods set forth in 37 C.F.R. §2.119.

It is believed that no fees are due, but should any fees be due, they may be charged to  
Opposer's representative's deposit account No. 03-2030.

Respectfully submitted,

CISLO & THOMAS, LLP

Dated: July 16<sup>th</sup>, 2008



---

Daniel M. Cislo, Esq.  
Reg. No. 32,973

**ELECTRONIC MAILING CERTIFICATE**

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being submitted electronically through the Electronic System for Trademark Trials and Appeal ("ESTTA") on the date shown below.

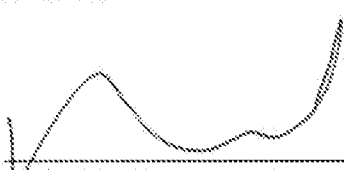
on \_\_\_\_\_ 7-10-08  
\_\_\_\_\_ 7-10-08  
Daniel M. Cislo, Reg. No. 32,973 Date

**CERTIFICATE OF SERVICE**

I hereby certify that one (1) copy of this document is being deposited with the United States Postal Service as First Class Mail, postage affixed, in an envelope addressed to:

Edwin D. Schindler  
Five Hirsch Avenue  
P. O. Box 966  
Coram, New York 11727-0966

Dated: 7-10-08

By:   
Daniel M. Cislo, Reg. No. 32,973

CISLO & THOMAS LLP  
1333 2nd Street, Suite 500  
Santa Monica, California 90401  
Tel: (310) 451-0647  
Fax: (310) 394-4477  
www.cislo.com

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

---

**IN THE MATTER OF APPLICATION SERIAL NOS.  
77/200,216 AND 77/199,725  
BOTH PUBLISHED IN THE OFFICIAL GAZETTE ON  
NOVEMBER 20, 2007**

---

GUTHY-RENKER CORPORATION,	)	OPPOSITION NO. 91182999
	)	
PETITIONER,	)	DECLARATION OF SARAH A. BROWN
vs.	)	IN SUPPORT OPPOSER'S REPLY IN
	)	SUPPORT OF MOTION FOR
MICHAEL BOYD., an Individual,	)	SANCTIONS RE APPLICANT'S
	)	FAILURE TO COMMUNICATE AND
APPLICANT.	)	PARTICIPATE IN DISCOVERY
	)	CONFERENCE PURSUANT TO
	)	§§2.120(2) , 2.120(g)
	)	

---

1. I am an attorney admitted to practice in the State of California and before the United States Patent and Trademark Office. I am an associate in the law firm of Cisko & Thomas LLP representing Opposer Guthy-Renker Corporation ("Guthy-Renker") in the instant Opposition proceeding. I make this Declaration of my own personal knowledge, or on information and belief where so stated. If called as a witness, I could and would testify competently to the truth of the matters asserted herein.

2. Mr. Kroll is listed as the attorney of record for Application Serial No. 77/200,216. Our office has no record of receiving notice that Mr. Schindler

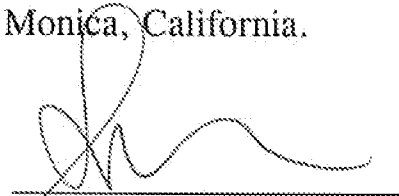
would be the attorney of record in the instant proceeding other than an e-mail received by our office on or about June 9, 2008. Applicant's answer was due on April 23, 2008 and the discovery conference deadline in this proceeding was set for May 23, 2008. Despite our letters and message left with Mr. Kroll's office, our office has no record of receiving any communications from either Mr. Kroll or Mr. Schindler until well after the deadline for the discovery conference, on or about June 9, 2008.

3. Mr. Kroll's name and address appear as the only attorney contact information on Applicant's answer. A true and correct copy of the signature page of Applicant's answer to the notice of opposition is attached herein as Exhibit A.

4. Our office received Applicant's answer to the notice of opposition in a June 9, 2008 e-mail from Mr. Kroll's office, which appended an allegedly earlier e-mail and Applicant's answer. Our office has no record of previous correspondence from either Mr. Kroll or Mr. Schindler, including the appended e-mail and Applicant's answer. Our office has no record of receiving a copy of Applicant's answer served by U.S. First Class Mail or by any method other than the e-mail received by us on or about June 9, 2008, nor have we, on Opposer's behalf ever consented to service by e-mail in the instant proceeding.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both under 12 U.S.C. 11001 and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his knowledge are true; and all statements made on information and belief are believed to be true.

Executed on Date: July 10, 2008 in Santa Monica, California.



---

Sarah A. Brown

