

ESTTA Tracking number: **ESTTA1068196**

Filing date: **07/14/2020**

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

Proceeding	91255498
Party	Plaintiff Sony Pictures Television Inc.
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Date	07/14/2020
Attachments	Reply Brief in Support of Motion to Strike.pdf(90665 bytes)

motion because it is black letter law that in an opposition proceeding, the relevant time period for purposes of asserting Applicant's equitable defenses is not measured from when the applicant began using its mark, but only from when the mark is published for opposition. The reason for such a rule is simple: the date of publication marks the first time that an opposer is able to challenge registration of the mark, which is all that is at issue in an opposition proceeding. *See* TBMP § 311.02(b) (acquiescence and laches "start to run ... from the time the mark is published for opposition"); *Nat'l Cable Television Assoc., Inc. v. Am. Cinema Editors, Inc.*, 937 F.2d 1572, 1582, 19 U.S.P.Q.2d 1424, 1432 (Fed. Cir. 1991) (measure for laches runs no earlier than publication for opposition); *Krause v. Krause Publ'ns Inc.*, 76 U.S.P.Q.2d 1904, 1914 (T.T.A.B. 2005) (acquiescence in an opposition proceeding does not start running until publication of mark).

In view of this controlling case law, Applicant's contention that Opposer's delay can be measured from when it first learned of Applicant's Mexican application in November 2018 is frivolous. To begin with, even if it were proper to measure the delay from that date, a period of less than a year and a half from November 2018 to the filing of the opposition is itself insufficient to establish the asserted defenses. However, more to point, it is simply nonsensical to charge Opposer with delay for failing to bring an opposition proceeding during a time period when it was legally impossible to bring such a challenge. Until the application at issue here was published on November 19, 2019, Opposer could not bring this proceeding. Quite obviously then, as the controlling case law holds, any purported "delay" can only begin to be counted as of that date. Applicant does not dispute that the four-month period from publication in November 2019 until the filing of the opposition in March 2020 is too short to support its defenses.

Applicant was already on notice of the legal deficiencies in these defenses by virtue of

Opposer's motion to strike in the earlier filed proceeding between these parties. Rather than simply accepting that it has no legal basis to bring these defenses, Applicant has instead repeated these same frivolous defenses and arguments, wasting the Board's and the parties' time in the process. Moreover, Applicant continues to insist that it intends to use the discovery process to explore irrelevant issues that cannot as a matter of law form any plausible defense to an opposition proceeding. The Board should protect against this unnecessary waste of resources and effort by striking defenses that should never have been asserted and that have no possible chance of succeeding under the governing law and undisputed facts.

CONCLUSION

For the foregoing reasons, Applicant's first, second and third affirmative defenses of waiver, acquiescence and laches should be stricken.

Dated: New York, New York
July 14, 2020

Respectfully submitted,
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing OPPOSER'S REPLY MEMORANUDM OF LAW IN FURTHER SUPPORT OF MOTION TO STRIKE APPLICANT'S FIRST, SECOND AND THIRD AFFIRMATIVE DEFENSES was served on Applicant by emailing a true copy on July 14, 2020 to Jerry C. Harris at jerry.harris@wickphillips.com.

Dated: New York, New York
July 14, 2020

By: /Jeffrey Chery/
Jeffrey Chery