

Exhibits

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

IN THE MATTER OF TRADEMARK REGISTRATION NO. 2,382,866
Registered September 5, 2000

U.S. Patent & TMO/TM Mail Rcpt. Dt. #57



07-26-2002

BOYDS COLLECTION, LTD.,)	Cancellation No. 32,282
Petitioner,)	
)	
v.)	<u>Mark:</u> TBC HERRINGTON'S TEDDY
)	BEAR CLUB & Design
HERRINGTON & COMPANY, INC.,)	<u>Registration No.:</u> 2,382,866
Registrant.)	<u>Registration Date:</u> September 5, 2000

REGISTRANT'S OPPOSITION TO PETITIONER'S MOTION TO COMPEL

Pursuant to 37 C.F.R. § 2.127(a), Fed. R. Civ. P. 26 and Fed. R. Civ. P. 34 registrant, HERRINGTON & COMPANY, INC. (hereinafter "Herrington" or "Registrant") hereby opposes the improper motion by petitioner BOYDS COLLECTION, LTD. (hereinafter "Petitioner")¹ which seeks to compel amended responses to Petitioner's first set of interrogatories, the production of documents in response to Petitioner's first set of Requests for Production of Documents and Things, and seeks to reset the testimony period for both parties (hereinafter "Motion" or "Motion to Compel").

I. INTRODUCTION.

Petitioner's motion is nothing more than a poor and misleading effort to cover up a lengthy skein of inaction, missed deadlines, and failures to follow TTAB procedures and requirements.

Even the failure to pursue this action and failure to follow procedures and requirements pales in comparison with the misleading and potentially fabricated details of Petitioner's "meet and confer" efforts.

¹ Registrant notes that this Motion has been submitted by "Eazypower Corporation," as evidenced on page 4 of the Motion. Registrant assumes that this is a mistake by counsel in copying the document from another. Accordingly, in its letter to Petitioner's counsel dated June 11, 2002, Registrant requested confirmation of the same. Despite this request, Petitioner has neither confirmed the mistake nor filed an amended motion to compel.

The factual background in this Opposition is lengthy because of the numerous misstatements to be corrected. What this demonstrates is Petitioner's desperation – desperation sufficient to cause a lawyer to go to whatever lengths necessary to coverup and remedy his errors and lack of diligence, all at Registrant's expense.

As a preliminary matter, Petitioner's Motion to Compel was filed outside the deadline for such motions, as set forth in 37 C.F.R. § 2.120(e); 63 FR 44098, which states that a motion to compel must be filed *prior* to the commencement of the first testimony period. The first testimony period in this action commenced on May 5, 2002. This Motion was not filed until June 3, 2002 which was the last and closing day of the testimony period. Additionally, there was no meet and confer between counsel for Petitioner and Registrant prior to filing this Motion. Further, Petitioner has failed to establish or even claim any showing of good cause for its testimony period to be extended. On these procedural bases alone, this Motion should be denied.

Notwithstanding all the procedural deficiencies in Petitioner's Motion to Compel, Registrant's discovery responses at issue herein were proper both substantively and procedurally. Registrant has complied with Trademark Rule 2.120(a) and (d)(2); 37 CFR §2.120(a) and (d)(2), and responded to the discovery requests and agreed to make responsive documents available on April 9, 2002.

After the receipt of this Motion, Registrant's counsel advised Petitioner's counsel Mr. Lawrence M. Haws that a motion to compel discovery was not warranted in this situation because even if Registrant files amended responses to the interrogatories and Petitioner inspects the responsive documents and/or sends Petitioner copies of the responsive documents, Petitioner's testimony period has already closed. Cardon Dec. at ¶ 3.² Mr. Haws responded that he needed some time to go over his strategy in this case and that he would provide Registrant with a response as to whether they would withdraw the Motion to Compel. *Id.* The parties stipulated to extend the time for Registrant to file an opposition to the Motion until July 26, 2002 because, at least as far as Registrant believed, the Motion was improperly filed. McArthur Dec. at ¶ 19. After leaving numerous telephone messages for Mr. Cherskov and

² Mr. Haws apparently did not understand that documents had to be authenticated through a deposition or requests

Mr. Haws during the weeks of July 9 and 15, 2002, none of which were returned, Ms. McArthur again called Mr. Cherskov on July 22, 2002 only to be informed that Petitioner was not willing to withdraw the Motion.³ McArthur Dec. at ¶¶ 20 and 21.

Perhaps most frustrating is the fact that Petitioner, in failing to so request and in failing to meet and confer with Registrant about this matter, brings this Motion based upon unspecified problems with Registrant's responses to Petitioner's interrogatories requests and the production of documents that have been made available to Petitioner since April 9, 2002. This Motion is served for no purpose other than a misguided attempt to resurrect Petitioner's ability to offer evidence and take testimony in this action, procedures that it failed to do during its testimony period.

II. PROCEDURAL DEFICIENCIES OF THE MOTION.

A. Too Late for a Motion to Compel.

Motions to compel must be filed prior to the commencement of the first testimony period. 37 C.F.R. § 2.120(e); 63 FR 44098. The testimony period for the party in the position of the plaintiff in this cancellation action closed on June 3, 2002. Thus, this first testimony period commenced 30 days prior thereto, i.e., on May 5, 2002. This Motion was filed on June 3, 2002, not only after the commencement of the first testimony period but on the closing day of the testimony period.

There is a 60 day break between the close of Petitioner's discovery period (i.e., March 5, 2002) and the opening of the Petitioner's first testimony period (i.e., May 5, 2002). This break was implemented to allow the petitioner adequate time to file a motion to compel or test the adequacy of responses prior to the opening of the first testimony period. Luemme Inc. v. D.B. Plus Inc., 53 USPQ 2d 1758, 1761(TTAB 1999) citing Trademark Rule 2.120(a) and TBMP Sec 403.02). Petitioner had until May 4, 2002 to bring this Motion or to request a stipulation from Registrant to extend the time to file a motion to compel and/or to reset the testimony period. No extensions were ever requested or granted by Registrant or the Board. McArthur

for admissions.

³ In spite of acknowledging the defects in the motion, Petitioner has pressed forward, most likely because of the inability of the TTAB to impose monetary sanctions.

Dec. at ¶¶ 6, 7 and 12.

Accordingly, this Motion to Compel was filed outside the time limit for such motions, without leave or explanation, and, thus, the Motion should be denied at the outset.

B. Petitioner Failed to “Meet and Confer” Prior to Filing this Motion.

Motions to compel must include a written statement from the moving party that it made a good faith effort, by conference or correspondence, to resolve the issue with the other party or its attorney and has been unable to reach agreement. TBMP § 532.02.

Although Petitioner did include in its Motion a written statement from Lawrence M. Haws, Esq. that it made a good faith effort by correspondence to resolve the issue with Registrant’s counsel Elizabeth Moreno McArthur, in accordance with TBMP § 532.02. The statement in Petitioner’s Motion is misleading and fails to satisfy the purpose of the “meet and confer” requirement. The fact is, prior to filing this Motion, Registrant’s counsel had not received any correspondence from Petitioner and had not been contacted by Petitioner through any means in an effort to resolve the discovery issues. McArthur Dec. at ¶ 9.

On June 3, 2002, Registrant’s counsel received a letter dated May 30, 2002, from Mr. Lawrence Haws of CHERSKOV & FLAYNIK regarding Registrant’s discovery responses. McArthur Dec. at ¶ 8 and Exhibit A. This was the first time since receipt of the Petitioner’s Discovery Requests that Registrant’s counsel received any correspondence or communication from Petitioner or Petitioner’s counsel with regard to Registrant’s responses to the discovery requests or any other matter in this action. McArthur Dec. at ¶ 9. The gist of Petitioner’s “meet and confer” statement in the Motion is that Mr. Haws sent correspondence letters to counsel for Registrant Ms. McArthur dated May 12, 2002 and May 28, 2002 and Ms. McArthur did not respond. Curiously, however, Mr. Haws never called to confirm receipt of any of his letters, nor did he follow up or confirm receipt of such urgent correspondences by email, facsimile, certified mail or courier. McArthur Dec. at ¶ 11. Furthermore, neither Registrant’s counsel nor anyone at the counsel’s Los Angeles or San Francisco offices have any record or ever receiving said letters. McArthur Dec. at ¶ 12.

On June 3, 2002, upon receipt of Mr. Haws May 30, 2002 letter,⁴ Ms. McArthur immediately called Mr. Haws to discuss these discrepancies and obtain copies of the disputed letters. McArthur Dec. at ¶ 12. In that discussion, Mr. Haws, for the first time, requested that Registrant agree to extend the testimony period for Petitioner. McArthur Dec. at ¶ 19. Counsel indicated that it could not agree to such an extension without first reviewing the disputed May 11 and May 28 letters. McArthur Dec. at ¶ 12. At no time did Mr. Haws ever request a stipulation to extend the time for Petitioner file a motion to compel and specifically, during that discussion, Mr. Haws never mentioned that Petitioner had filed or intended to file a motion to compel in this case. McArthur Dec. at ¶ 13.

In Mr. Haws' alleged May 30 letter, he states that "unless you provide us with *some* indication as to your intention as to this matter by 5 P.M. Chicago time, Petitioner will be left with no alternative but to petition the TTAB to compel Registrant to respond." See Exhibit 7 of the Motion. However, Mr. Haws did have at least three alternatives—he could have sent this last chance letter to allow Registrant a full day (rather than 5 hours) to respond, he could have simply called Ms. McArthur or he could have sent this last chance May 30 letter to her in San Francisco, rather than to her former Los Angeles office location, a fact of which Mr. Haws was aware. McArthur Dec. at ¶¶ 3 and 4. Mr. Haws made none of these reasonable attempts and on June 3, 2002, filed the instant Motion claiming a breakdown of the "meet and confer" process.

Later that night, June 3, 2002, at approximately 4 PM (PST), Mr. Haws forwarded to Ms. McArthur copies of said May 12 or May 28, 2002 letters, but did not provide any confirmation of the transmission by facsimile, mail or any verification that such documents were transmitted or mailed or received by Registrant's counsel. McArthur Dec. at ¶ 14 and Exhibit C. Thus, the only proof that such documents were sent to Registrant's counsel is Mr. Haws' statement.⁵ Regardless, Registrant has provided evidence that even if these letters were sent, they were never received. Petitioner's counsel said nothing further in this regard

⁴ Ms. McArthur received Mr. Haws' May 30 letter on June 3, 2002, when it was forwarded to her from the Los Angeles office where Mr. Haws sent it by facsimile. McArthur Dec. at ¶ 8 and Exhibit A.

⁵ It should be noted that Mr. Haws' statement in his May 28 letter indicates that he received confirmation from "our offices that a response would be forthcoming by May 24th," yet when Ms. McArthur questioned him as to the name of the person who made this representation, he stated that he simply left a message with the receptionist and that this statement had not in fact been made. McArthur Dec. at ¶ 17.

since he had already filed the instant Motion, even though he never informed Ms. McArthur of this in their June 3 conversation.

As described above, counsel for Herrington agreed to provide Petitioner with certain responsive documents. Registrant's counsel expressly informed Petitioner's counsel at the time they discussed this matter on June 11, 2002 that Registrant would produce, at the place where they are usually kept, i.e., at Registrant's business, the responsive documents and that Registrant would respond to the amended interrogatory requests correcting ambiguities and other deficiencies in the requests. Cardon Dec. at ¶ 4.

Even assuming that the Board is willing to accept Petitioner's representation that it did in fact mail the correspondences to Ms. McArthur, the fact that Registrant never received them cannot be overlooked. As such, and it has been notified by Registrant, Petitioner's 37 C.F.R. § 2.120(e) statement is insufficient because the parties have never actually had an opportunity to resolve the issues presented by the Motion, since Petitioner's Motion was filed prior to Registrant receiving Mr. Haws' "meet and confer" letter. Cardon Dec. at ¶ 5 and Exhibit A.

C. Petitioner Has Not Shown Good Cause for the Extension of its Testimony Period.

The testimony period may be extended by stipulation approved by the Board, upon motion granted by the Board or by order of the Board. 37 C.F.R. § 2.121(d); TBMP § 701. In the instant Motion, Petitioner has offhandedly asked the Board for an order "compelling Registrant to reset the testimony period," without any cited authority or any factual justification.

Initially, we note that a motion to compel discovery is not the proper vehicle to bring a request to reset the testimony period.⁶ A request to extend or reset the testimony period should have been brought in a motion to the Board, with or without Registrant's consent. TBMP §§ 509.02 and 701. Second, we note that Registrant, without approval from the Board, does not have the authority to reset the testimony period. See TBMP § 701. Third, even assuming that Registrant would consent to a rescheduling to the testimony period in this action, Petitioner

⁶ A motion to compel to discovery is a vehicle used to obtain discovery when a party refuses to provide discovery including documents and things, interrogatories and deponents. 37 C.F.R. § 2.120(3); TBMP § 523.01.

has failed to specify the proposed extension of time or closing date for each rescheduled time. TBMP § 509.02.

In addition to the foregoing procedural deficiencies, Petitioner has failed to show good cause for the extension of its testimony period and, accordingly, its request must be rejected. Until the filing of this Motion, and all throughout its testimony period, Petitioner never requested a stipulation from Registrant and never filed a motion with the Board for an extension of the testimony period. McArthur Dec. at ¶ 7. As mentioned above, under the Board's rules, the testimony or discovery period may be extended only upon motion granted by the Board. Motions to reschedule or extend the testimony (or discovery) period will be allowed upon a showing of good cause. 63 FR 480991 (Sept. 9, 1998.) To this end, the Board has stated on numerous occasions that it will "scrutinize carefully any such motions and will consider, in determining whether good cause has been shown, the diligence of the moving party during the discovery period." 63 Fed Reg. 48086 (Sept. 9, 1998). Thus, the Board will deny a motion to extend discovery period if the party commenced discovery only on the last day possible day and made no effort to depose the opponent during the discovery period. Such delay does not constitute good cause for an extension of the discovery period. 3 J. Thomas McCarthy MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 20:105 (2002) (citing to Luemme Inc. v. D.B. Plus Inc., 53 USPQ 2d 1758 (Board denying motion to extend discovery where petitioner served it first set of interrogatories and documents requests son the last possible day of the discovery period)).

Even more remiss than the petitioner in the Luemme case, is the Petitioner in this case.⁷ Petitioner has had 180 days,⁸ commencing on September 6, 2001 through March 5, 2002, to take discovery in this action, and waited until the last possible day to serve its discovery requests. McArthur Dec. at ¶ 2. Petitioner then had 60 days, from March 5, 2002 through May 4, 2002, to review Registrant's discovery responses, inspect the responsive documents, test the adequacy of Registrant's responses and file a motion to compel, if necessary. Petitioner did nothing during this time period. Thereafter, Petitioner had from May 5, 2002 through June 3,

⁷ Registrant notes that likewise, in the parallel cancellation action filed by Petitioner against another of Registrant's federal registrations (Cancellation Action No. 32,146), Petitioner failed to take any discovery, failed to take any testimony and has similarly done nothing to prosecute that action.

2002 to offer testimony and evidence in this case. It failed to do so and failed to take the necessary procedural steps for doing so. Petitioner failed to take any testimony, failed to file any notices of reliance or even inspect or request copies of the responsive documents during the discovery or testimony periods, and, up until the filing of this Motion, Petitioner has made no attempt to request a rescheduling of the testimony period from Registrant or the Board. McArthur Dec. at ¶¶ 7 and 19. Thus, as it stands, Petitioner has taken no action and has offered no evidence to prove its case. Now, on the last possible day of its testimony period, it hopes to extend the time to do what it should have done months ago. Its dilatory conduct and delay does not constitute good cause for such a request and amounts to bad faith⁹ for which this Motion should be denied.

D. Petitioner's Motion to Compel Discovery is Irrelevant at this Stage.

For the reasons set forth above, namely, Petitioner's failure to show good cause for the extension of its testimony period, said request must be denied. Subject to the Board's ruling on this issue, if the testimony period is not reset, Petitioner's Motion to Compel discovery is irrelevant.

It is well established that testimony must be taken and evidence submitted to the Board during a party's testimony period, unless the parties stipulate and the Board approves otherwise, or upon motion granted by or order of the Board. 37 C.F.R. § 2.121(a)(1). In this case, Petitioner has failed to take any testimony in this action during its designated testimony period. Petitioner never made any request from Registrant or the Board to extend the testimony period until June 3, 2002, the date on which its testimony period closed, when it filed this motion to compel. McArthur Dec. at ¶¶ 7 and 9.

Further, Petitioner has failed to file any reliance on any of the responses to Registrant's

⁸ The discovery period is set by the Board to last for 180 days. Trademark Rule 2.12(a).

⁹ It is well known that because of the nature of *inter partes* proceedings, the Board expects parties and their attorneys to cooperate with each other in discovery matters. As such, it looks with extreme disfavor upon those who do not. Trademark TBMP 412.01 and 419. To satisfy this expectation each party should make a *good faith* effort to satisfy the discovery needs of its adversary and to seek only relevant and proper discovery. TBMP 412.01; See also discussion in 5 Jerome Gilson, TRADEMARK PROTECTION AND PRACTICE § 26.10[1].

interrogatories during its testimony period.¹⁰ McArthur Dec. at ¶ 9. Likewise, with regard to Registrant's responses to Petitioner's request for documents, Petitioner has, in the first place, failed to inspect the documents and, in the second place, failed to introduce them into evidence through testimony of witnesses or to request for admission or otherwise.¹¹ The discovery responses were served on Petitioner on April 9, 2002 and Petitioner had until May 4, 2002 (i.e., the day before Petitioner's testimony period opened) to review the responses for adequacy and to file a motion to compel, if necessary.

Now, on the closing day of the testimony period, Petitioner is attempting to extend the period in one last chance attempt to introduce the documents into evidence, documents which Respondent agreed to produce on April 9, 2002 but which Petitioner has not yet even inspected and/or copied or requested copies of from Registrant. This conduct is impermissible.

III. SUBSTANTIVE DEFICIENCIES IN THE MOTION.

A. Amended Responses to Petitioner's First Set of Interrogatories.

Petitioner has requested in this Motion, that Registrant amended its responses to Petitioner's first set of interrogatories. Registrant filed its responses to said first set of requests on April 9, 2002 in compliance with the 37 C.F.R. § 2.120(d)(2)(1). Petitioner fails to indicate in its Motion how or in what regard the responses or designations should be amended. See 37 C.F.R. § 2.120(3). Therefore, even if appropriate, which it is not, Registrant is without the required information to amend its responses in response to this Motion.

B. The Documents Have Been Made Available.

Petitioner has also requested that Registrant produce the documents in response to Petitioner's first set of document requests. Registrant's response to Petitioner's first set of Requests for Production of Things clearly states on page 2 that "Registrant will make available

¹⁰ To be considered as evidence, the interrogating party must, before the close of its testimony period, file a copy of each interrogatory and answer to be introduced and a notice of reliance thereon. 37 C.F.R. § 1.120(j)(3)(i).

¹¹ Documents produced in response to document requests cannot be made of record by themselves and must be authenticated and introduced either through testimony during a discovery or testimony deposition, through admissions as to their authenticity or as exhibits to responses to interrogatories or by notice of reliance, if applicable. 37 C.F.R. § 2.120(j)(3)(ii).

for inspection and copying on mutually agreeable date and a mutually agreeable time and place all documents that Registrant agrees to produce in response to Petitioner's Requests." See Motion, Exhibit 4, page 2. Trademark Rule 2.120(d)(2); 37 C.F.R. 2.120(d)(2) specifically states "production shall be made at the place where the documents and things are usually kept, or where the parties agree." See also discussion in 5 Jerome Gilson TRADEMARK PROTECTION AND PRACTICE § 26.10[2] regarding usual production of documents at the place where the documents are kept.

Petitioner states in this Motion that "not a single document was produced by Registrant in response to Petitioner's first set of discovery requests." See Motion, page 2. Contrary to counsel's assertion, production of documents as they are kept in the ordinary course of business does not require the opponent to incur the costs and make the effort to copy and forward the responsive documents to the moving party. "A party is not required to copy responsive documents and forward them to its adversary in response to documents requests." 3 J. Thomas McCarthy MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 20.110 (2002). It is sufficient for a responding party to make the documents available, at the place they are normally kept, for inspection and copying by the inspecting party. Electronic Industries Ass'n v. Potega, 50 USPQ 2d 1775 (TTAB 1999).

In this case, the responsive documents were available for review and copying in the place and manner in which they are kept in the ordinary course of business since April 9, 2002 in accordance with C.F.R. 2.120.¹² However, to date, Petitioner has made no attempt to inspect the documents at Registrant's business or arrange for a mutually agreeable place for inspection or even to request that Registrant send copies of the documents to Petitioner for inspection. McArthur Dec. at ¶ 9. Petitioner has done nothing except to file this Motion alleging that Registrant has made no documents available, when, in fact, Registrant has made the responsive documents available as of April 9, 2002.

A party cannot revive lapsed rights to introduce evidence into the record by bringing a

¹² All of the produced documents are responsive to a Petitioner's requests, as set forth in its First Request for Production of Documents and Things. Any documents requested by Petitioner's discovery requests that were not made available have been objected to by Registrant, as set forth in Registrant's responses, and Petitioner has made no argument against the adequacy of such objections.

motion to compel for the production of documents that have been timely and adequately made available, but which Petitioner failed to take the time or effort to inspect. That is exactly what Petitioner has done and is the precise reason for having done it. Petitioner's request for production of documents, at issue here, have been complied with in accordance with 37 C.F.R. § 2.120(d)(2). This is not a question of failing to produce the requested discovery. Registrant filed its response to Petitioner's first set of document requests and made the responsive documents available for inspection on April 9, 2002. This misleading gimmick to revive missed deadlines should not be countenanced.

III. REQUEST FOR JUDGMENT BASED UPON FAILURE OF PETITIONER TO TAKE TESTIMONY AND FAILURE TO PROVE CASE

Since the TTAB may not issue monetary sanctions, the only appropriate sanction left at this stage is judgment. Indeed, judgment is independently available as well.

If the plaintiff fails to take testimony or submit a Notice of Reliance during its testimony period, the defendant may move for judgment. Judgment may be granted based upon plaintiff's failure to prove its case, for example where it fails to take offer any testimony or evidence and its testimony period has closed. 37 C.F.R. § 2.132; TBMP § 535.

In the case at hand, Petitioner has failed to offer or notice any testimony and has failed to file any evidence in support of its case before the testimony period closed. McArthur Dec. at ¶ 9. The period for testimony closed on June 3, 2001. Only on this last possible day of the testimony period, did Petitioner take any action in this case. On June 3, 2002, Petitioner filed the instant Motion to Compel. However, throughout the 30 day testimony period, it failed to notice or offer any testimony, failed to offer any evidence into the record based upon the Registrant's responses to the interrogatories and document requests, and, more importantly, failed to properly request from Registrant or the Board any extension of time for the testimony period. McArthur Dec. at ¶ 7. Rather, it simply filed this Motion in a specious attempt to circumvent the designated trial dates and keep its testimony period running.

Accordingly, Registrant hereby moves the Board for judgment in this action based upon Petitioner's failure to prove its case, that is -failure to take testimony or submit a notice of

reliance during its testimony period under TBMP § 2.132(a). Such action is appropriate for the reasons set forth herein and such action is respectfully requested.

IV. CONCLUSION.

Not only is Petitioner's Motion to Compel untimely and violative of the meet and confer requirement, but Petitioner has failed to show good cause or provide any reason at all for the Board to extend its testimony period. Therefore, its requests to compel discovery even if complied with, are irrelevant at this late stage. Moreover, Registrant has fully complied with its duty and obligation to produce the documents in full compliance with Trademark Rule 2.120(d)(2); 37 C.F.R. 2.120(d)(2). Petitioner's failure to exercise due diligence with regard to this cancellation action and to failure to take any testimony or file any notice of reliance or offer any evidence at all in this action must be noted. Petitioner had filed this Motion in bad faith and solely to attempt to revive missed deadlines. Petitioner has not been diligent and has been dilatory in the discovery matters in this action. On that basis, together with the procedural deficiencies in the Motion, as set forth above, this Motion must be denied.

Dated: July 26, 2002

Respectfully submitted,

HERRINGTON & COMPANY, INC.

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July 26, 2002

BY U.S. EXPRESS MAIL

United States Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513
Attention: Legal Assistant, TTAB

Re: Cancellation No.: 32,282
Mark: TBC HERRINGTON'S TEDDY BEAR CLUB & Design
Registration No.: 2,382,866
Registration Date: September 5, 2000
Registrant: Herrington & Company, Inc.
Our Ref.: 40362.10

Dear Sir or Madam:

Enclosed herewith is Registrant's Opposition to Petitioner's Motion to Compel for the above referenced matter. So that we may have a timely record of receipt of the enclosed, please date-stamp the enclosed, stamped, self-addressed post card, and deposit it into the U.S. mail.

Please direct all correspondence regarding this matter to my attention.

Very truly yours,



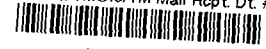
Elizabeth Moreno McArthur
Attorney at Law

EMM/sl

Enclosure

Copy: P. Craig Cardon

U.S. Patent & TMO/TM Mail Rept. Dt. #57



07-26-2002

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