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

In the Matter of Application Serial No. 78/218646

Mark: CINEPRO
 Application Serial No. 78/218646
 Filed: February 25, 2003
 Published: November 4, 2003
 Applicant: Powell, Michael J.
 Opposition No. 91159541

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CINEPRO, INC., CONSTANTINE "GUS" :	DECLARATION OF COUNSEL
COSSIFOS, and MICHAEL PANICCI, :	IN OPPOSITION TO THE MOTION
:	:
Opponents, :	:
:	:
-- against -- :	:
:	:
MICHAEL J. POWELL, :	:
:	:
Applicant. :	:
-----X	

MARK D. MARDEROSIAN, Esq. declares as follows:

1. My law firm represents applicant MICHAEL J. POWELL in this matter and respectfully submits this Declaration in opposition to the motion dated October 13, 2004 filed by opposer CONSTANTINE "GUS" COSSIFOS (the "Motion").

2. This firm received the First Document Demand and First Interrogatories (both dated May 24, 2004) at issue in the pending motion around June 4, 2004. This firm served reciprocal discovery demands on opposing counsel by first class United States mail on September 13, 2004. Exhibits 1 and 2. Opposing counsel hasn't responded to those demands and, in fact, has suggested in correspondence that he never received them. Martin Aff., Ex.E.

3. To complicate matters, opposing counsel commenced a plenary state court action involving the "CINEPRO" mark on August 12, 2004 in California Superior Court, Placer County. Exhibit 3. Despite a medical emergency involving my elderly father, opposing counsel refused to grant our clients a brief extension within which to answer or file motions in that case. I made the necessary filings in time, while tending to my parent's needs in rural Ohio. Even so, opposing counsel actually sent me a letter threatening to seek a default in the event we failed to pay appropriate filing fees to the California Superior Court on time. Exhibit 4.

4. We responded to his First Document Demand in a letter dated October 5, 2004. In that letter, we made clear that "all documents within our client's possession, custody, and/or control that are responsive to your initial demand were attached as exhibits to the various affidavits our client submitted to the TTAB in May 2004" and that Mr. Powell would "supplement our response as additional responsive documents are created and/or otherwise become available" (Martin Decl. Ex.D). Having produced them already, we saw no need to "exalt form over substance" by producing them again. We made our position clear in a letter, which opposing counsel saw fit to exclude from his motion papers. Exhibit 5.

5. Our client stands ready to supplement and/or revise his responses in any way the Board deems appropriate under the circumstances. He simply requests until December 1, 2004 to complete that task. He also urges the Board to direct opposers to serve their responses to his reciprocal demands, which have been outstanding since late-September. Discovery is scheduled to close in this matter on January 1, 2005 according to the order issued on September 2, 2004 by the presiding Interlocutory Attorney. Exhibit 6. The parties have ample time to exercise their respective rights and to honor their reciprocal responsibilities in this regard.

6. More important to the merits in this proceeding, our client stands poised to complete his purchase of the now-defunct Cinepro's remaining assets. Should that sale be consummated on the terms under discussion, Mr. Powell will have positioned himself to show ownership and usage continuity going back almost a decade before his initial filing in February 2003. Any proceeds generated by the asset sale will redound to the deceased founder's young daughter, Kristin, and Mr. Powell in addition has committed to paying her a percentage of the revenues generated by any amplifier sales made under the "CINEPRO" name. I respectfully urge the Board to give Mr. Powell adequate time to complete these transactions, whose

consummation ultimately will reduce the issues-in-controversy and streamline proceedings before the TTAB.

7. Opposers have no such connections to the former Cinepro and have expressed no intention to acquire the assets of the deceased founder's estate. They merely wish to profit from pre-established name recognition and business good will generated by a bright young man, now deceased, with whom they had no connection. They have done so predominantly by lying to the marketplace. They have misrepresented to prospective customers that their products were made by the same manufacturer that disappeared in early 2002, when "Cinepro" founder Eric Abraham died. Now, they seek to support their belated competing claim to the mark by submitting the same lies and misleading statements to this tribunal. Under the circumstances, their behavior has been outrageous – not to mention illegal – and I respectfully urge the Board not to condone their conduct by countenancing the pending Opposition.

8. In closing, I note that opponents and their counsel have been particularly strident in pressing their opposition. Despite having been given several extensions within which to file their initial opposition papers, they declined to reciprocate by granting Mr. Powell even a single short adjournment within which to file his response – and even demanded default judgment against him. Their bad faith is evident not only in the harassing and unprofessional way in which they've conducted themselves as a procedural matter, but in the outright misrepresentations contained in the Opposition and associated competing registration application.

9. Mr. Powell is a struggling entrepreneur in the consumer electronics business, who is channeling his limited resources into rehabilitating and expanding the contested mark. Opposers are relative strangers to the industry, whose misrepresentations to the Board and relevant market soon will become apparent.

10. Based on the foregoing, Mr. Powell respectfully requests that the Board deny the Motion. He also urges the Board to direct Mr. Cossifos and his fellow opposers to honor their reciprocal discovery obligation without further delay.

Dated: New York, New York
November 3, 2004


MARK V. MARDEROSIAN

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