

**THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB**

Mailed:  
May 28, 2008  
Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

David Milligan and Marc Miranda

v.

Inhand Mobile Entertainment, LLC

Opposition No. 91163338  
against Serial No. 78308536

David Milligan and Marc Miranda, *pro se*.

Craig Weiss of Silverberg & Associates for Inhand Mobile  
Entertainment, LLC.

Before Bucher, Zervas and Kuhlke, Administrative Trademark  
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Inhand Mobile Entertainment, LLC seeks registration on  
the Principal Register of the mark **MOANTONES** (*in standard  
character format*) for services recited in the application, as  
amended, as follows:

"entertainment services, featuring, the  
provision of specialty ringtones and audio  
entertainment files consisting of sound and  
voice recordings, namely, music and sex-

oriented material for consumer use via wireless devices" in International Class 41.<sup>1</sup>

David Milligan and Marc Miranda timely filed their opposition to the application. In paragraphs one and two of their notice of opposition, opposers claim to have coined this term and claim a priority over applicant.<sup>2</sup> In paragraph three, opposers assert that the term "moantones" should be considered a generic term. In their final brief, opposers argue that permitting applicant to register this term would unfairly restrict opposers' ability to describe the product they create and sell on their website address (having the domain name of "moantones.com"). At the very least, opposers assert that the term "moantones" is merely descriptive in that it directly describes a characteristic or quality of the underlying product.

In its answer, applicant denied the salient allegations of the notice of opposition, and asserted affirmative defenses of priority of use and opposers' unclean hands.

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<sup>1</sup> Application Serial No. 78308536 was filed on October 2, 2003 based upon applicant's allegation of first use anywhere and first use in commerce at least as early as September 30, 2003.

<sup>2</sup> We construe this portion of the pleadings as opposers' claim of priority *and* likelihood of confusion, with alternative claims that applicant's applied-for matter is merely descriptive, if not generic.

In reviewing the record of this proceeding, we find that neither opposers nor applicant have timely submitted for the record any evidence or testimony during their respective testimony periods. Materials attached to the notice of opposition or to applicant's answer are not of record.

In any opposition proceeding, the opposer bears the burden of proof, whatever the alleged grounds for opposition. However, in light of opposers' failure to offer any evidence into the record during their testimony period, we enter judgment against opposers for their failure to prove their case. 37 CFR § 2.123(1); *see also Original Appalachian Artworks Inc. v. Streeter*, 3 USPQ2d 1717, 1717 n.3 (TTAB 1987) [stating that a party may not reasonably presume evidence is of record when that evidence is not offered in accordance with the rules].

*Decision:* The opposition is hereby dismissed.