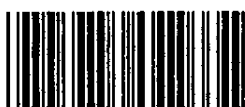


USDC SCAN INDEX SHEET



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3:01-CV-01752 BOSLEY MEDICAL V. KREMER

91

AMDM.

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2 SAN DIEGO, CALIFORNIA 92130
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4 G. PETER ALBERT, BAR NO. SBN 211248
HEIDI L. BELONGIA (PRO HAC VICE)

5 Attorneys for Plaintiff,
6 BOSLEY MEDICAL INSTITUTE, INC.

FILED
04 FEB 13 PM 3:53

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: NUNC PRO TUNC DEPUTY

FEB 12 2004

7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA

9
10 BOSLEY MEDICAL INSTITUTE, INC., a) Case No.: 01-CV-1752 WQH (JMA)
Delaware corporation,)
11) BOSLEY MEDICAL INSTITUTE'S
Plaintiff,) AMENDED NOTICE OF MOTION AND
12) MOTION FOR SUMMARY JUDGMENT
v.) ON TRADEMARK DILUTION CLAIMS
13)
14 MICHAEL STEVEN KREMER, an individual,) DATE: April 2, 2004
Defendant.) TIME: 3:00 P.M.
15) JUDGE: HON. WILLIAM Q. HAYES
16)
17)
18)
19)

20 TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

21 PLEASE TAKE NOTICE that on April 2, 2004, at 3:00 p.m., or as soon thereafter as
22 counsel may be heard in the above-entitled court, located at 940 Front Street, San Diego, California
23 92101, plaintiff BOSLEY MEDICAL INSTITUTE ("Bosley Medical") will, and hereby does, move the
24 Court for summary judgment on its trademark dilution claims on the ground that there is no genuine
25 issue as to any material fact related to that adjudication and that the moving party is therefore entitled to
26 judgment as a matter of law for the reason that defendant MICHAEL STEVEN KREMER ("Kremer")
27
28

Plf's Not. Of Mot. For Summary Judgment
on Trademark Dilution Claims
01-CV-1752 WQH (JMA)

91

1 has failed to demonstrate any triable issue with respect to actual dilution of the famous mark BOSLEY
2 MEDICAL.

3 This Motion is based upon this Amended Notice of Motion and Motion, the Second
4 Amended Memorandum of Points and Authorities filed herewith, the Amended Declaration of Heidi L.
5 Belongia in Support of Bosley Medical's Cross-Motions for Summary Adjudication on Trademark
6 Infringement and Dilution Claims filed on February 5, 2004 and the exhibits thereto filed therewith, all
7 pleadings and papers on file in this action, and upon such other matters as may be presented to the court
8 at the time of hearing. Please note that the Second Amended Memorandum of Points and Authorities
9 filed herewith differs from the Amended Memorandum of Points and Authorities filed on February 5,
10 2004 only in that the Second Amended Memorandum includes page 3, which was: i) inadvertently
11 omitted from the version previously filed; ii) previously provided to all parties.
12

13 Pursuant to the schedule established by order of this Court, opposition to this motion is
14 due to be served and filed on or before February 25, 2004, and any reply brief must be served and filed
15 on or before March 12, 2004.
16

17 Dated: February 12, 2004

By: 

G. Peter Albert, Jr.

FOLEY & LARDNER

11250 El Camino Real, Suite 200

San Diego, California 92138

Tel: (858) 847-6700

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Attorneys for Plaintiff

BOSLEY MEDICAL INSTITUTE, INC.

1 **FOLEY & LARDNER**
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5
6
7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
9

10 BOSLEY MEDICAL INSTITUTE, INC., a) Case No. 01-CV-1752 WQH (JMA)
11 Delaware corporation)
12 Plaintiff,) **PROOF OF SERVICE**
13 v.)
14 MICHAEL STEVEN KREMER, an)
individual,)
15 Defendant.)

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ORIGINAL

1 **PROOF OF SERVICE**

2 I am employed in the **County of San Diego, State of California**. I am over the age of 18 and
3 not a party to this action; my current business address is **402 w. Broadway, Suite 2300, San
4 Diego, CA 92101**.

4 On **February 12, 2004**, I served the foregoing document(s) described as:

- 5 **1. BOSLEY MEDICAL INSTITUTE'S AMENDED NOTICE OF MOTION
6 AND MOTION FOR SUMMARY JUDGMENT ON TRADEMARK
7 DILUTION CLAIMS; AND**
- 8 **2. SECOND AMENDED MEMORANDUM OF POINTS AND
9 AUTHORITIES IN SUPPORT OF BOSLEY MEDICAL'S CROSS-
10 MOTION FOR SUMMARY JUDGMENT OF TRADEMARK DILUTION**

9 on the interested parties in this action as follows:

10 X **BY THE FOLLOWING MEANS:**

11 I placed a true copy thereof enclosed in sealed envelope(s) addressed as follows:

12 Via FedEx

13 **Paul Alan Levy**
14 **Public Citizen Litigation Group**
15 **1600-20th Street, N.W.**
Washington, D.C. 20009-1001

Via US Mail

Charles A. Bird
Luce, Forward, Hamilton & Scripps
LLP
600 W. Broadway, Suite 2600
San Diego, CA 92101-3391

16 X **BY MAIL**

17 I placed the envelope(s) with postage thereon fully prepaid in the United
18 States mail, at **San Diego, California**.

19 X I am readily familiar with the firm's practice of collection and processing
20 correspondence for mailing with the United States Postal Service; the firm
21 deposits the collected correspondence with the United States Postal Service
22 that same day, in the ordinary course of business, with postage thereon fully
23 prepaid, at **San Diego, California**. I placed the envelope(s) for collection and
24 mailing on the above date following ordinary business practices.

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X BY EXPRESS SERVICE CARRIER (Via Overnight Courier Service)

X I am readily familiar with the firm's practice for collection and processing of correspondence for delivery by FEDERAL EXPRESS: collected packages are picked up by an express carrier representative on the same day, with the Airbill listing the account number for billing to sender, at **San Diego, California**, in the ordinary course of business. I placed the envelope(s) in an envelope or package designated by the express service carrier for collection and processing for express service delivery on the above date following ordinary business practices.

X Executed on **February 12, 2004**, at **San Diego, California**.

X I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Sonia Moreno
Sonia Moreno