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

Proceeding	91164009
Party	Plaintiff BFS Brands, LLC and Bridgestone/Firestone North American Tire, LLC
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Submission	Motion for Default Judgment
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Date	06/01/2006
Attachments	Combined Motion for Default Judgement and Motion to Suspend Proceedings.PDF (4 pages)(180930 bytes)

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

BFS BRANDS, LLC, and BRIDGESTONE/FIRESTONE, INC. NORTH AMERICAN TIRE, LLC Opposers, v. RUBBER KING TYRES INDIA PVT. LTD. Applicant.	)))))))))))))))	Opposition No. 164,009 Serial No. 78/347,864

COMBINED MOTION FOR DEFAULT JUDGMENT
AND MOTION TO SUSPEND PROCEEDINGS

BFS Brands, LLC and Bridgestone Firestone North American Tire, LLC ("Opposers") move the Trademark Trial and Appeal Board ("the Board") for an order granting default judgment against Applicant, Rubber King Tyres India Pvt. Ltd. ("Applicant") on the ground that Applicant has failed to comply with the Board's April 9, 2006 discovery order. 37 C.F.R. § 2.120(g).

Opposers further request that proceedings in this opposition be suspended while the Board considers Opposers' Motion for Default Judgment. 37 C.F.R. § 2.127(d).

I. Motion for Default Judgment

Opposers hereby move the Board under 37 C.F.R. § 2.120(g) and T.B.M.P § 527.01(a) for an order granting default judgment against Applicant on the ground that Applicant has failed to comply with the Board's April 9, 2006 order compelling Applicant to (1) photocopy and mail to the offices of Opposer's counsel documents responsive to Opposer's First Request for

Production of Documents; (2) include in its document production all confidential documents; and (3) respond fully to Interrogatory Nos. 8(d), 13, 16, and 22.

On April 9, 2006, the Board granted Opposers' Motion to Compel and issued an order compelling Applicant to (1) photocopy and mail to the offices of Opposer's counsel documents responsive to Opposer's First Request for Production of Documents; (2) include in its document production all confidential documents; and (3) respond fully to Interrogatory Nos. 8(d), 13, 16, and 22. The Board order set a deadline of May 9, 2006 for Applicant to comply with the discovery order.

To date, Applicant has ignored the Board's order compelling discovery and has produced no documents or Supplemental Interrogatory Answers.

The Board should enter a default judgment as a sanction for Applicant's failure to comply with the Board's discovery order. "If a party fails to comply with an order of the Trademark Trial and Appeal Board relating to discovery, including a protective order, the Board may make any appropriate order, including any of the orders provided in Rule 37(b)(2) of the Federal Rules of Civil Procedure…" 37 C.F.R. § 2.120(g)(1); see also, T.B.M.P. § 527.01(a). Pursuant to Fed. R. Civ. P. 37(b)(2)(C), judgment by default may be entered when a party fails to obey an order of the court.

A default judgment is the appropriate remedy in this case, where Applicant has failed to obey the Board's order. *See Unicut Corp. v. Unicut, Inc.,* 222 U.S.P.Q. 341 (T.T.A.B. 1984) (granting default judgment against respondent/petitioner for failure to comply with discovery requests and Board order); *Caterpillar Tractor Co. v. Catfish Anglers Together, Inc.*; 194 U.S.P.Q. 99 (T.T.A.B. 1977) (granting judgment by default for Respondent's failure to comply with order compelling discovery); *Baron Philippe de Rothschild S.A. v. StyRite Optical Mfg. Co.*,

55 U.S.P.Q.2d 1848 (T.T.A.B. 2000) (granting opposer's motion for sanctions in the nature of entry of judgment against applicant for failure to comply with Board order compelling discovery).

II. Motion to Suspend

Opposers further request that the Board suspend proceedings while it considers Opposers' Motion for Default Judgment. Trademark Rule 2.127(d), 37 C.F.R. § 2.127(d), provides that when a party files a motion that is potentially dispositive of the proceeding, the Board will suspended the case with respect to all matters not germane to the motion. Accordingly, Opposers' request that the Board suspend proceedings while the it considers Opposers' potentially dispositive Motion for Default Judgment.

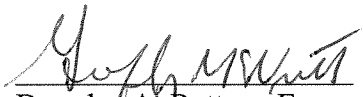
III. Conclusion

For the reasons set forth above, Opposers request that the Board enter judgment by default against Applicant, and that proceedings be suspended until such time as the default judgment is entered.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP

Dated: June 1, 2006



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing COMBINED MOTION FOR DEFAULT JUDGMENT AND MOTION TO SUSPEND PROCEEDINGS was served this 1st day of June, 2006, by mailing a true copy thereof to Rubber King Tyres India Pvt. Ltd.'s attorney of record via First Class U.S. Mail, postage prepaid, addressed to the following:

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By: _____

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