

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

-----X	:	
Dennis Stuff, Inc.	:	Opposition No. 91169854
Opposer,	:	Serial No. 76-977,298
-against-	:	Mark: RIDES
Harris Publications., Inc.	:	
Applicant.	:	
-----X		

MOTION FOR JUDGMENT UNDER TRADEMARK RULE 2.132(a)

Harris Publications, Inc. (hereinafter "Applicant" or "Harris"), pursuant to 37 C.F.R. §2.132(a), hereby moves to dismiss the Opposition filed by Dennis Stuff, Inc. (hereinafter "Opposer" or "Dennis Stuff") for Opposer's failure to prosecute. Harris respectfully submits that the instant Motion must be granted because Opposer's testimony period has passed, and Opposer has not taken testimony or offered any other evidence.



A. **PROCEDURAL HISTORY AND FACTS**

03-12-2007

U.S. Patent & TMO/TM Mail Rcpt Dt #30

Opposer filed the present Opposition on March 17, 2006 against registration of Harris' application for the mark **RIDES**, the subject of Serial No. 76-977,298. The Trademark Trial and Appeal Board (hereinafter "TTAB") instituted the Opposition on March 20, 2006, requiring the filing of an Answer by April 29, 2006 and setting the discovery and testimony dates. In this initial notification, the TTAB scheduled Opposer's 30-day testimony period to close on January 4, 2007.

Opposer, with the consent of Harris, on March 21, 2006, filed a Motion to Suspend Proceedings to afford the parties time to pursue settlement discussions. The TTAB, on March 21, 2006, granted this Motion, suspending proceedings through May 20, 2006. In this

notification, the TTAB reset the discovery and testimony dates, to wit, the TTAB scheduled Opposer's 30-day testimony period to close on March 5, 2007.

On May 22, 2006, Opposer with the consent of Harris, filed a further Motion to Suspend Proceedings to afford the parties additional time to continue settlement discussions. (This Motion was timely as May 20, 2006 fell on a Saturday.) The TTAB, on May 23, 2006, granted this Motion, suspending proceedings through July 21, 2006. In this notification, the TTAB reset the discovery and testimony dates in accordance with the dates listed by Dennis Stuff in its Motion, to wit, the TTAB scheduled Opposer's 30-day testimony period to close on February 17, 2007.

As settlement discussions proved to be unfruitful, Harris filed a timely Answer on July 31, 2006, denying all of Opposer's substantive allegations. No further extensions of time of the testimony periods (or any of the other trial dates) was sought by either party.

Harris' 30-day testimony period is scheduled to commence on March 17, 2007 and close on April 18, 2007, pursuant to the TTAB's May 23, 2006 Order. Alternatively, pursuant to the TTAB's March 21, 2006 Order, Harris' 30-day testimony period is scheduled to commence on April 4, 2007 and close on May 4, 2007.

Opposer has not taken any testimony or offered any other evidence in the Opposition to date. Specifically, Opposer has not noticed or conducted any testimonial depositions, filed any Notices of Reliance, or taken any other steps to introduce evidence into this record.

B. HARRIS' MOTION FOR JUDGMENT UNDER TRADEMARK RULE 2.132(a)
FOR OPPOSER'S FAILURE TO PROSECUTE MUST BE GRANTED
AS OPPOSER HAS PROFFERED NO EVIDENCE IN THIS PROCEEDING
AND BECAUSE HARRIS' MOTION IS TIMELY

A Motion for Judgment for failure of the Opposer to prosecute is appropriate where the time for taking testimony by the Opposer has expired and that party has not taken testimony or offered any other evidence. The purpose of this motion under 37 CFR §2.132(a) is to save the defendant/applicant the expense and delay of continuing with the trial in a case where Opposer has failed to offer any evidence during its testimony period. *Litton Business Systems, Inc. v. J.G. Furniture Co. Inc.*, 190 USPO 428, *recon. denied*, 190 USPO 431 (TTAB 1976).

The party in the position of defendant/applicant must file its Motion to Dismiss, under 37 CFR §2.132(a), before the opening of its testimony period.

In the instant proceeding, Opposer has not taken any testimony or entered any evidence into the record by February 17, 2007, the last date of its Testimony Period. (Alternatively, if the TTAB determines that the Trial Schedule of its March 21, 2006 remains in effect, Opposer has not taken any testimony or entered any evidence into the record by March 5, 2007, the last date of its Testimony Period.) As this (either) period has now expired (and there is no indication in the record that Opposer has good and sufficient cause for its failure to prosecute this Opposition), the present Motion for Judgment is an appropriate vehicle to save the defendant the expense and delay of continuing with the trial. Moreover, the granting of the Motion (and the dismissal of the Opposition Proceeding) will have the salutary effect of clearing the docket of the TTAB.

Harris' testimony period does not commence until March 17, 2007 (or April 4, 2007, under the March 21, 2006 Order). Accordingly, the Motion for Judgment is timely under 37 CFR §2.132(c),

C. CONCLUSION

Opposer has taken no action to prosecute this Opposition Proceeding, to wit, Opposer has taken no testimony or introduced any evidence into the record prior to the expiration of its Testimony Period. Applicant has denied all of Opposer's substantive allegations in the Notice of Opposition. Accordingly, the burden is on Opposer to establish its allegations through the proffering of evidence. Opposer has failed to do so.

Harris has filed this Motion for Judgment in a timely manner, as Applicant's Testimony Period does not commence until March 17, 2007 (or April 4, 2007, under the March 21, 2006 Order). Accordingly, Applicant respectfully requests that the instant Motion for Judgment be granted and the Opposition to registration of Serial No. 76-977,298 be dismissed with prejudice.

In the event that its present Motion for Judgment is denied, pursuant to 37 CFR §2.132(a), Applicant specifically reserves its right to offer evidence during a reset Testimony Period.

Respectfully submitted,

By:



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Dated: March 8, 2007

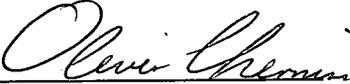
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, on March 8, 2007


Oliver R. Chernin

CERTIFICATE OF SERVICE

I hereby certify that on March 8, 2007, I caused one true copy of the foregoing MOTION FOR JUDGMENT UNDER TRADEMARK RULE 2.132(a) to be served by first class mail upon Opposer, Dennis Stuff, Inc., by causing a true and correct copy thereof to be deposited in the United States mail, postage prepaid, addressed to Opposer's counsel of record as follows:

Peter M. Langrind, Esq.
JACOBS DEBRAUWERE LLP
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New York, New York 10022


Oliver R. Chernin
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