

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

In the Matter of Application Serial No. 78/657412  
For the mark: BAJA  
Filing Date: June 23, 2005  
Publication Date: October 10, 2006

John Hindaly,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No.: 91174655
	)	
Donn K. Harms,	)	
	)	
Applicant.	)	
_____	)	

**APPLICANT'S MOTION FOR JUDGMENT**

Applicant Donn K. Harms ("Harms" or "Applicant") files this Motion for Judgment under 37 C.F.R. § 2.132(a) dismissing the opposition of John Hindaly ("Hindaly" or "Opposer") to Application Serial No. 78/657412 for the mark BAJA, and in support would respectfully show the Board as follows.

The Board's Scheduling Order of December 20, 2006, a copy of which is attached as Exhibit A, established certain deadlines in this Opposition, including a deadline before which Opposer must file evidence in support of the Opposition. That deadline was October 6, 2007.

October 6, 2007, as long since come and gone, but Opposer has filed no testimony or other evidence. In addition, Opposer never noticed any testimony depositions, nor did it request an extension of its testimony period.



11-19-2007

Accordingly, Applicant requests that the Board dismiss the Opposition to prosecute under 37 C.F.R. § 2.132(a). See also *Hewlett-Packard Co. v. Olympus Corp*, 931 F.2d 1551, 18 U.S.P.Q.2d (BNA) 1710 (Fed. Cir. 1991); *Procyon Pharms, Inc. v. Procyon Biopharma, Inc.*, 61 U.S.P.Q.2d (BNA) 1542, 1544 (T.T.A.B. 2001) (denying motion to extend Opposer's testimony period and granting applicant's motion to dismiss). A motion for judgment's purpose is to save the Applicant the expense and delay of a trial when the Opposer failed to offer any evidence during its testimony period. *Litton Bus. Sys., Inc. v. J.G. Furniture Co.*, 190 U.S.P.Q (BNA) 431, 434 (T.T.A.B. 1976). It is within the Board's discretion to grant a motion for judgment after the close of the moving party's testimony period, and Applicant respectfully requests that it do so. 37 C.F.R. § 2.132(c).

In this case, Opposer failed to offer any evidence during its testimony period in support of its contentions, which relied on an alleged likelihood of confusion between Opposer's Mark and Applicant's mark. In addition, Opposer never noticed any testimony depositions nor did it seek an extension of its testimony period, which ended last month. Without evidence, Opposer's contentions cannot succeed. Therefore, the Opposition should be dismissed and the Application should be allowed to proceed.

Applicant respectfully requests judgment in its favor.

Respectfully submitted,

November 15, 2007

By:   
Karen Convery, Attorney for  
Applicant  
AMERICAN PATENT & TRADEMARK  
LAW CENTER  
12702 Via Cortina, Suite 100  
Del Mar, CA 92014  
Tel: (858)509-1400  
Fax: (858)509-1677

**CERTIFICATE OF MAILING**

I hereby certify that this APPLICANT'S MOTION FOR JUDGMENT is being deposited with the United States Postal Service, postage fully prepaid, addressed to:

U.S. Patent and Trademark Office  
P.O. Box 1451  
Alexandria, VA 22313-1451

this 15th day of November, 2007.

  
Karen Convery

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing  
APPLICANT'S MOTION FOR JUDGMENT was served upon Opposer by  
mailing the same, first-class mail, postage fully prepaid to:

RAHDERT STEELE BOLE & REYNOLDS, PA  
535 Central Avenue  
St. Petersburg, FL 33701

this 15th day of November, 2007.

  
Karen Convery

United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Mailed: December 20, 2006

Opposition No 91174655  
Serial No. 78657412

KAREN CONVERY  
AMERICAN PATENT & TRADEMARK LAW CENTER  
12702 VIA CORTINA STE 100,  
DEL MAR, CA 92014-3769 UNITED STATES

John Hindaly

v.

Harms, Donn K.

Celeste Sharpe  
Rahdert Steele Bole & Reynolds, P.A.  
535 Central Avenue,  
St. Petersburg, FL 33701 UNITED STATES

**Monique Tyson, Paralegal Specialist:**

A notice of opposition to the registration sought in the above-identified application has been filed. A copy of the notice is attached.

**ANSWER IS DUE FORTY DAYS** after the mailing date hereof. (See Trademark Rule 2.196 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that affect the rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003); Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003). Notices concerning the rules changes, as well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), are available at [www.uspto.gov/web/offices/dcom/ttab/](http://www.uspto.gov/web/offices/dcom/ttab/).

The parties are particularly referred to Trademark Rule 2.126 pertaining to the form of submissions. Paper submissions, including but not limited to exhibits and depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.

**EXHIBIT A**

**Discovery and testimony periods are set as follows:**

Discovery period to open:	1/9/07
Discovery period to close:	7/8/07
30-day testimony period for party in position of plaintiff to close:	10/6/07
30-day testimony period for party in position of defendant to close:	12/5/07
15-day rebuttal testimony period for plaintiff to close:	1/19/08

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

**NOTE:** The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "*Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board*," 1235 TMOG 68 (June 20, 2000). The notice is available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

**New Developments at the Trademark Trial and Appeal Board**

TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at <http://estta.uspto.gov>. Images of TTAB proceeding files can be viewed using TTABVue at <http://ttabvue.uspto.gov>.

**EXHIBIT A**