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

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| Proceeding | 91181915 |
| Party | Defendant Dal-Con Promotions, Inc. |
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| Date | 09/08/2009 |
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of
Trademark Application Serial No. 78/956857
For the Mark: **LAUGHLIN 2008**
In the name of Dal-Con Promotions, Inc.
Published: September 25, 2007

GOOD SPORTS, INC.

Opposer,

v.

DAL-CON PROMOTIONS, INC.,

Applicant.

Opposition No. 91181915

**APPLICANT'S MOTION FOR JUDGMENT UNDER 35 C.F.R. §2.132(a) FOR
OPPOSER'S FAILURE TO PROSECUTE CASE**

Dal-Con Promotions, Inc. ("Applicant") files this motion for judgment against Good Sports, Inc. ("Opposer") based on Opposer's failure to prosecute this Opposition proceeding. Opposer failed to submit any testimony during its testimony period and otherwise failed to participate in this case since proceedings resumed. Accordingly, Applicant respectfully requests that the Board enter judgment by default against Opposer with prejudice.

I. Introduction

Opposer failed to take any testimony or otherwise admit into evidence any proof in support of its opposition during its 30-day testimony period, which closed on July 24, 2009. There is no justifiable basis for Opposer's failure to prove its case during its 30-day testimony

period. Neither the Board nor the parties have further suspended the proceeding or otherwise delayed the testimony period. There is no good or sufficient cause as to why judgment should not be rendered against Opposer. Therefore, Opposition No. 91181915 should be dismissed with prejudice.

II. Applicant Rules and Discussion

35 C.F.R. §2.132(a) states, in part:

If the time for taking testimony by any party in the position of plaintiff has expired and that party has not yet taken testimony or offered any other evidence, any party in the position of defendant may, without waiving the right to offer evidence in the event the motion is denied, move for dismissal on the ground of failure of the plaintiff to prosecute... In the absence of a showing of good and sufficient cause, judgment may be rendered against the party in the position of plaintiff.

A defendant may appropriately file a motion for judgment directed to the sufficiency of a plaintiff's trial evidence when the plaintiff's testimony period has passed and the plaintiff has not taken testimony or offered any other evidence. See TBMP §534.01-02. *Detroit Entm't, LLC v. Motor Cities Casinos, LLC*, No. 04-1218, 2004 U.S. App. LEXIS 22580 (Fed. Cir. Oct. 12, 2004); *Mattel, Inc. v. Henson*, No. 03-1360, 2004 U.S. App. LEXIS 1596 (Fed. Cir. Feb. 3, 2004). See also, e.g., *Hewlett-Packard Co. v. Olympus Corp.*, 931 F.2d 1551 (Fed. Cir. 1991) (Federal Circuit affirmed the Board's dismissal of an opposition for failing to present a *prima facie* case of likelihood of confusion when opposer failed to submit current status and title copies of its registrations); *Procyon Pharmaceuticals Inc. v. Procyon Biopharma, Inc.*, 61 USPQ2d 1542, 1544 (TTAB 2001) (Cancellation petitioner did not take any discovery or testimony.); *S F W Licensing Corp. v. DiPardo Packing Ltd.*, 660 USPQ2d 1372, 1374 (TTAB 2001) (On last day of opposer's testimony period, counsel filed both motion to withdraw and motion to extend).

In this case, Opposer has taken no action whatsoever to prosecute this action during Opposer's testimony period. The Board's most recent scheduling order for this matter shows that Opposer's testimony period closed on July 24, 2009. Therefore, Opposer had adequate time to prepare its case and offer evidence during its testimony period. Furthermore, Opposer served no discovery requests on Applicant during the discovery period.

In 2008, the parties had discussed possible settlement of the case. In fact, this proceeding had previously been suspended by the parties to allow sufficient time to negotiate settlement terms, including a possible license agreement. However, Applicant ultimately determined that settlement was not in its best interest and the proceedings resumed without further discussion between the parties. By Board order dated September 9, 2008, proceedings resumed on March 10, 2009 and the close of the discovery period was set for April 10, 2009. To preserve its right to serve discovery requests on Opposer, Applicant served discovery requests on counsel for Opposer on April 10, 2009. Opposer served written responses to such requests on June 26, 2009. From that date forward, Opposer made no attempt to submit evidence to support its case or to further the prosecution of this matter before the Board. Accordingly, Opposer's testimony period concluded without the offering of any evidence.

Although by letter dated April 16, 2009 Opposer's counsel wrote to Applicant's counsel upon receipt of Applicant's discovery requests to indicate that he thought the parties were in settlement discussions, the parties never agreed to the further extension of the trial dates, including the close of discovery or the respective testimony periods, beyond those identified in the Board's September 8, 2008 order. Opposing counsel never requested an extension to serve discovery on behalf of Opposer or a further extension of the remaining trial dates. By failing to submit any evidence to support its position in this matter during Opposer's testimony period, it is clear that Opposer has no interest in prosecuting this case.

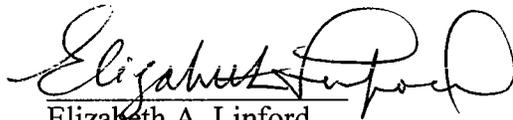
Because this proceeding has caused significant delay in the registration of Applicant's mark (the Notice of Opposition was filed by Opposer on January 16, 2008) and Opposer has failed to prosecute the matter by neither serving discovery nor submitting evidence during its testimony period, Applicant respectfully requests that this motion be granted.

III. Conclusion

Due to Opposer's failure to prosecute this opposition, a judgment in Applicant's favor is appropriate pursuant to 37 C.F.R. §2.132(a).

Dated: September 8, 2009

Respectfully Submitted,

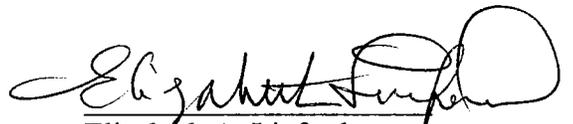
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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being electronically transmitted to the United States Patent and Trademark Office via ESSTA (*Electronic System for Trademark Trials and Appeals*) on the date identified below.

Date: September 8, 2009

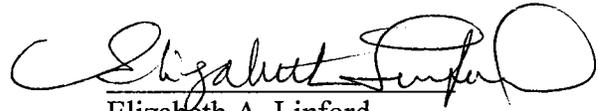

Elizabeth A. Linford

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing APPLICANT'S MOTION FOR JUDGMENT UNDER 35 C.F.R. §2.132(a) FOR OPPOSER'S FAILURE TO PROSECUTE CASE has been served on Mario G. Ceste, Esq. on this 8th day of September, 2009, via First Class Mail, postage prepaid to:

Mario G. Ceste, Esq.
Law Offices of Mario G. Ceste LLC
P.O. Box 82
Wallingford, Connecticut 06492

Date: September 8, 2009


Elizabeth A. Linford