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

Proceeding	91183065
Party	Defendant Daniel, Sayo Isaac
Correspondence Address	SANFORD J. ASMAN LAW OFFICE OF SANFORD J. ASMAN 570 VININGTON CT ATLANTA, GA 30350-5710 UNITED STATES sandy@asman.com
Submission	Other Motions/Papers
Filer's Name	Sanford J. Asman
Filer's e-mail	sandy@asman.com
Signature	/sanford j. asman/
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SMS CLOTHING,

Plaintiff-Opposer

v.

SAYO ISAAC DANIEL

Defendant-Applicant.

Opposition No. 91183065

**DEFENDANT-APPLICANT, SAYO ISAAC DANIEL'S
MOTION TO DISMISS OPPOSITION**

Sayo Isaac Daniel, (“Applicant”), hereby moves to Dismiss the subject Opposition due to the failure of Plaintiff-Opposer SMS Clothing¹ (“Opposer”) to prosecute the opposition.

Statement of Relevant Facts and Request for Relief

The present Opposition was initiated on March 19, 2008, and Trial Dates were originally set at that time.

While Applicant timely filed its Answer on April 5, 2008, since that time the record is devoid of any prosecution of the Opposition by Opposer. Instead, on July 1, 2008 Opposer’s Attorney filed a Request to Withdraw. That motion was granted, and Opposer was given thirty days to appoint new counsel or file a paper stating that Opposer chose to proceed *pro se*. Opposer failed to comply with that Order. On August 13, 2008 the TTAB Ordered Opposer to Show Cause within thirty days as to why default judgment should not be entered against Opposer.

On September 11, 2008 Opposer filed a response to the Order to Show Cause in which John Smart asserted that he had not previously gotten the Order to Show Cause because he had been in

China. Notably, Mr. Smart is not the named Opposer. Furthermore, it is the Opposer's obligation to be available to respond to communications by the TTAB, notwithstanding Mr. Smart's personal travel schedule.

In response to Mr. Smart's letter, on September 12, 2008 the TTAB reset the Trial Dates. In accordance with the newly set Trial Dates, discovery closed on February 14, 2009, and Opposer's Trial Period ended on May 15, 2009. Nevertheless, to date Opposer has taken no testimony, conducted no discovery, and has utterly failed to prosecute the Opposition.

Applicant's application was published for Opposition on November 20, 2007. At this point, Opposer has held up the registration of Applicant's "SMSWEAR" mark for a year and a half, without having demonstrated (or having even attempted to demonstrate) a single iota of proof as to any of the allegations contained in the Notice of Opposition. Specifically, there has been no showing of registration of any mark by Opposer; no showing of the use of the "SMS" mark on any goods; no showing that any alleged use, by Applicant, of the commercially different "SMSWEAR" mark was (or would be) in the same channels of trade, promoted to the same customers, or even related to similar products; and there has been no showing that the products of Opposer (if any) cannot co-exist with those of Applicant in the marketplace.

In view of the failure by Opposer to do anything other than delay the registration of Applicant's mark, Applicant respectfully requests that the TTAB now dismiss the present Opposition, with prejudice.

Respectfully submitted,

By: /Sanford J. Asman/
Sanford J. Asman
Attorney for Defendant-Applicant
Sayo Isaac Daniel

¹ While the present opposition was brought in the name of "SMS Clothing", there is no legal entity having that name, and the real party in interest appears to be an individual named John Smart, who is prosecuting the opposition *pro se*.

Sanford J. Asman, Esq.
570 Vinington Court
Atlanta, GA 30350
Phone : (770) 391-0215
Fax : (770) 668-9144
E-mail : sandy@asman.com

CERTIFICATE OF SERVICE

I hereby certify that, on the date set forth below, true copies of the foregoing:

**DEFENDANT-APPLICANT, SAYO ISAAC DANIEL'S
MOTION TO DISMISS OPPOSITION**

were mailed by First Class Mail, with adequate postage affixed, to:

John Smart
SMS Clothing
1390 Alpha Lake Road #201
Whistler, BC V0N1B
CANADA

Respectfully submitted,

Dated: May 28, 2009

By: /Sanford J. Asman/
Sanford J. Asman
Attorney for Defendant-Applicant
Sayo Isaac Daniel

Law Office of Sanford J. Asman
570 Vinington Court
Atlanta, Georgia 30350

Phone : (770) 391-0215
Fax : (770) 668-9144
E-mail : sandy@asman.com