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Filing date: **05/15/2009**

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

Proceeding	91188303
Party	Defendant The Luxury Holidays, Inc.
Correspondence Address	MORTON J. ROSENBERG ROSENBERG, KLEIN & LEE 3458 ELLICOTT CENTER DR., STE 101 ELLICOTT CITY, MD 21043-4178 UNITED STATES RKL@RKLPLAW.COM
Submission	Motion for Sanctions
Filer's Name	MORTON J. ROSENBERG
Filer's e-mail	RKL@RKLPLAW.COM
Signature	/MORTON J. ROSENBERG/
Date	05/15/2009
Attachments	MOTIONFORSANCTIONS-5-15-2009.PDF (11 pages)(325576 bytes)

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

TravBuzz, Inc. d/b/a/ "Palace Tour"	:	Opposition No. 91188303
Opposer,	:	Mark: THE GOLDEN CHARIOT
v.	:	Serial No. 77/448,792
The Luxury Holidays, Inc.	:	

APPLICANT'S MOTION FOR SANCTIONS
UNDER 37 C.F.R. § 2.120(g) AND FED. R. CIV. PRO 37

Applicant, The Luxury Holidays, Inc. by and through its undersigned Attorneys brings this Motion for Sanctions under 37 C.F.R. § 2.120(g) and Federal Rules of Civil Procedure 37.

On 11 May 2009, Applicant's Attorneys telephoned the attorneys for Opposer to enquire about the "discovery conference" which was scheduled to be completed by 8 May 2009. The Opposing attorney had indicated that he received instructions from his client "not to take any action". The Opposing attorney refused to participate in the discovery conference and thus no discovery conference was held.

Consequently, Applicant seeks sanctions under Rule 2.210(g) and the Fed. R. Civ. Pro. 37 in the form of Entry of Judgment against Opposer and issuance of the Registration based upon Serial Number 77/448,792 for the mark "THE GOLDEN CHARIOT".

BACKGROUND

On 15 April 2008 Applicant filed a Trademark Application for the mark “THE GOLDEN CHARIOT” consisting of standard characters without any claim to a particular font, style, size or color. The mark was originally filed in connection with services in International Class 39, specifically:

“Arranging travel tours; arranging excursions for tours; travel agency services, namely providing tourist information concerning travel”.

The mark was published for opposition on 9 September 2008.

Within the time period required for opposition, the Opposer requested an extension of time to oppose through and including 7 January 2009.

On 8 January 2009, Opposer filed a Notice of Opposition against Applicant’s mark.

On 28 January 2009, Opposer filed an Amended Notice of Opposition.

On 28 January 2009 the TTAB issued an Order providing dates as set forth in this proceeding indicating that the deadline for the discovery conference was ordered as of 8 April 2009.

Applicant made answer to the Amended Notice of Opposition on 5 March 2009. Prior to the deadline for the discovery conference on 8 April 2009, Applicant’s Attorney telephoned the Opposer’s attorney to initiate the required discovery conference.

The Opposer’s attorney requested a one month extension of time to confer with his client in this matter.

The Opposing attorney then filed a Request for Extension of Time on 8 April 2009 to extend the deadline for the discovery conference through and including 8 May 2009.

The Opposing attorney sent Applicant's Attorneys an e-mail indicating that the Request was made for an extension of the deadline for the discovery conference through and including 8 May 2009 (Exhibit 1).

The Motion to Extend the Time was granted by the TTAB on 8 April 2009 (Exhibit 2).

The Applicant's Attorneys did not receive any further communication from Opposer's attorneys and on 11 May 2009 they made a telephone call to Opposer's attorneys to initiate the required discovery conference.

The Opposing attorney in the telephone conversation on 11 May 2009 informed the Applicant's Attorney that he had conferred with his client and that his client indicated to him "not to take any further action in this Opposition". The Applicant's Attorney then requested the Opposing attorney to send a letter to this effect or at least send an e-mail to this effect, however, the Opposing attorney declined to take any action.

The Applicant's Attorney on 12 May 2009 sent a letter to the Opposing attorney summarizing the telephone conversation wherein the Opposing attorney indicated he would not participate in a discovery conference (Exhibit 3). On 12 May 2009 the Applicant's Attorney sent an e-mail attaching the 12 May 2009 letter to the Opposing attorney (Exhibit 4).

Applicant's Attorney has not received any further communication from the
Opposing attorney.

ARGUMENT

Applicant seeks dismissal of this Opposition and issuance of Applicant's Registration under 37 C.F.R. § 2.120(g) which states:

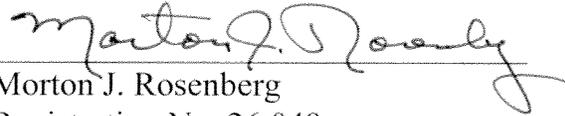
(g) Sanctions. (1) If a party fails to participate in the required discovery conference, or if a party fails to comply with an Order of the Trademark Trial and Appeal Board relating to disclosure or discovery, including a Protective Order, the Board may make any appropriate Order, including those provided in Rule 37(b)(2) of the Federal Rules of Civil Procedure, except that the Board will not hold any person in contempt or award expenses to any party. The Board may impose against a party any of the sanctions provided in Rule 37(b)(2) in the event that said party or any attorney, agent, or designated witness of that party fails to comply with a Protective Order made pursuant to Rule 26(c) of the Federal Rules of Civil Procedure. A Motion for Sanctions against a party for its failure to participate in the required discovery conference must be filed prior to the deadline for any party to make initial disclosures.

Section 2.120(g) permits this Board to grant any remedy specified in 37 C.F.R. § 2.120(g)(1) which includes entering judgment against the disobedient party.

Opposers failure to take any action in this Opposition and decision not to participate in the discovery conference demonstrates an intent to obstruct Applicant's receipt of information and/or documents and/or to abandon this proceeding.

As a result, entry of Judgment against Opposer and issuance of Applicant's Application to a Registration in this case is appropriate.

Respectfully submitted,



Morton J. Rosenberg
Registration No. 26,049
Attorney for Applicant
3458 Ellicott Center Drive, Suite 101
Ellicott City, MD 21043
Tel: 410-465-6678
Fax: 410-461-3067
e-mail address: rkl@rkllpatlaw.com

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the foregoing Applicant's Motion for Sanctions was served on the Opposer by mailing a true copy thereof by first class mail, postage prepaid to: Neil B. Friedman, Esquire, Baker and Rannells PA, 575 Route 28, Suite 102, Raritan, New Jersey 08869, on this 15th day of May 2009.



Morton J. Rosenberg
Attorney for Applicant

Mort Rosenberg

From: Neil Friedman [n.friedman@br-tmlaw.com]
Sent: Wednesday, April 08, 2009 10:22 AM
To: RKL
Cc: jmr@br-tmlaw.com, 'Kelly Hnasko'
Subject: Opp. No. 91188303 for the mark GOLDEN CHARIOT

Mr. Rosenberg,

As a follow-up to our call, I have filed the motion we discussed. You should have conformation of same. Unfortunately, because today was the last day for the conference the motion marked the initial conference date as closed.

Nevertheless, as we agreed, we will proceed as follows

Time to Answer :	CLOSED
Deadline for Discovery Conference :	5/8/09
Discovery Opens :	5/8/09
Initial Disclosures Due :	6/8/09
Expert Disclosure Due :	10/05/2009
Discovery Closes :	11/04/2009
Plaintiff's Pretrial Disclosures :	12/19/2009
Plaintiff's 30-day Trial Period Ends :	02/02/2010
Defendant's Pretrial Disclosures :	02/17/2010
Defendant's 30-day Trial Period Ends :	04/03/2010
Plaintiff's Rebuttal Disclosures :	04/18/2010
Plaintiff's 15-day Rebuttal Period Ends :	05/18/2010

I plan on contacting you after the holidays to discuss a mutually convenient time for the conference in advance of May 8, 2009. Once again, have a happy Passover.

Neil B. Friedman, Esq.



Baker and Rannells, PA

575 Route 28, Suite 102
Raritan, NJ 08869
Telephone: (908) 722-5640
Facsimile: (908) 725-7088
E-mail: n.friedman@br-tmlaw.com

EXHIBIT 1

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

April 8, 2009

PROCEEDING NO. 91188303
Travbuzz, Inc. d/b/a Palace
Tours

v.

The Luxury Holidays, Inc.

MOTION TO EXTEND GRANTED

By the Board:

Travbuzz, Inc. d/b/a Palace Tours's consent motion to extend, filed Apr 08, 2009, is granted. Dates are reset as set out in the motion.

.oOo.

LAW OFFICES

ROSENBERG, KLEIN & LEE
CHARITRED

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EMAIL: *rkl@rklatlaw.com*

PATENT, TRADEMARK & COPYRIGHT MATTERS

May 12, 2009
MR4027-3/OPP

VIA E-MAIL AND FIRST CLASS MAIL

Neil B. Friedman, Esquire
Baker and Rannells, P.A.
575 Route 28, Suite 102
Raritan, New Jersey 08869

Re: Trademark Opposition
Opposition No. 91188303
Mark: THE GOLDEN CHARIOT
Travbuzz, Inc. dba Palace Tours v. The Luxury Holidays, Inc.

Dear Mr. Friedman:

In accordance with the Notice of Opposition No. 91188303 filed on 8 January 2009, the parties are required to hold a discovery conference. The deadline set in the original Notification of Opposition for the discovery conference was 19 March 2009.

Our firm did not hear from you subsequent to our answering the Notice of Opposition and made a call to you on or about 19 March 2009 to hold the discovery conference. At that time you indicated to our firm that you were speaking to your client and requested an extension of time for holding the discovery conference. Our firm stipulated to an approximate one month extension of time and you filed a Motion to Extend the Time which was granted by the TTAB through and including 5 May 2009.

Neil B. Friedman, Esquire
May 12, 2009
Page 2

We did not hear from you by 8 May 2009 and on 11 May 2009 we made a call to your office and spoke to you directly with regard to this matter.

During the telephone conversation, you indicated to us that you would not participate in the Discovery Conference and that your client had informed you not to take any further action in this opposition.

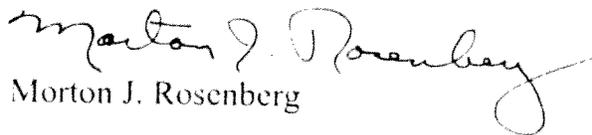
During the telephone conversation I again requested that you participate in the Discovery Conference however you reiterated the fact that your client had informed you not to take any action.

I then asked for written correspondence with regard to you and your client's decision and you refused. I then asked for an e-mail correspondence and once again you refused to acknowledge the facts by e-mail.

I am both e-mailing you this letter and further sending it to you by first class mail.

If any of the facts that I have outlined above are incorrect, please inform me as soon as possible.

Very truly yours,
For: ROSENBERG, KLEIN & LEE


Morton J. Rosenberg

MJR/la

Mort Rosenberg

From: RKL
Sent: Tuesday, May 12, 2009 12:04 PM
To: 'n.friedman@br-tmlaw.com'
Subject: OPPOSITION 91188303

Attachments: LETTER TO OPPOSING ATTORNEY 5-12-2009.PDF



LETTER TO
OPPOSING ATTORNEY!
5/12/2009

RKL REF. MR4027-3/OPP

MR. FRIEDMAN;

PLEASE SEE THE ATTACHED LETTER.

VERY TRULY YOURS
MORTON J. ROSENBERG