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Filing date: **03/12/2010**

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

Proceeding	91191881
Party	Plaintiff Peg Perego U.S.A., Inc.
Correspondence Address	Jonathan Froemel 1 North Wacker, Suite 4400 Chicago, IL 60606 UNITED STATES jfroemel@btlaw.com, mwever@btlaw.com
Submission	Motion for Sanctions
Filer's Name	Jonathan P. Froemel
Filer's e-mail	jfroemel@btlaw.com
Signature	/jonathan p froemel/
Date	03/12/2010
Attachments	pdfdoc (217393-0-3-12-2010 4-13-20 PM).pdf (12 pages)(360679 bytes)

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

PEG PEREGO U.S.A., INC.)	
)	
Opposer,)	
)	
v.)	Opposition No.: 91191881
)	Mark: PEREGON HEALTHCARE
)	FOR ALL
KUNSHAN GEOBY PARAGON CO., LTD.)	Serial No.: 77/535895
)	
)	
Applicant.)	

MOTION FOR SANCTIONS

Pursuant to 37 CFR §2.120(g) and Fed. R. Civ. P. 37, Peg Perego, U.S.A. (“Opposer”) respectfully requests that the Trademark Trial and Appeal Board issue an order for sanctions, including the entry of judgment, against Applicant. In support thereof, Opposer states as follows:

FACTUAL AND PROCEDURAL BACKGROUND

The parties were required to conduct their initial conference on or before December 20, 2009. On December 18, 2009, counsel for Opposer contacted counsel for Applicant to schedule the initial conference. On that same date, counsel for Applicant advised that “My understanding is that client is going to let this application go abandoned. I will let you know if anything changes, but that is my understanding.” (See 12/18/09 email correspondence attached hereto as Exhibit A). Applicant’s counsel subsequently advised Opposer’s counsel that “I do not have instructions to abandon and by the time I am able to get instructions from China client, it may be faster just to file motion for default.” (See 12/21/10 email correspondence attached hereto as Exhibit B). To date, Applicant has not participated in the required discovery conference, and continues to express intent to abandon the pending application.

ARGUMENT

I. THE ENTRY OF JUDGMENT AGAINST APPLICANT IS AN APPROPRIATE SANCTION

37 CFR §2.120(g)(2) provides the following:

If a party fails to participate in the required discovery conference, . . . and such party or the party's attorney or authorized representative informs the party seeking discovery that no response will be made thereto, the Board may make an appropriate order, as specified in paragraph (g)(1) of this section.

In this case, Applicant's attorney informed counsel for Opposer that his client would not be participating in the required discovery conference. *See* Exhibit A. As a result, sanctions pursuant to 37 CFR §2.120(g)(1) are warranted.

Applicant has failed to comply with the Scheduling Order by failing to participate in the discovery conference. 37 CFR §2.120(g)(1) provides that:

If a party fails to comply with an order of the Trademark Trial and Appeal Board relating to disclosure or discovery...the Board may make any appropriate order, including those provided in Rule 37(b)(2) of the Federal Rules of Civil Procedure...

Applicant has failed to comply with the Scheduling Order, and has expressly stated its intent not to comply with this Order, and also to abandon its pending application. As a result, Applicant is subject to all of the sanctions provided for in Rule 37(b)(2), including entry of judgment.

37 CFR §2.120(g)(1) provides that the Board "may make any appropriate order, including those provided in Rule 37(b)(2) of the Federal Rules of Civil Procedure" Rule 37(b)(2)(A)(vi) permits "rendering a default judgment against the disobedient party" as a sanction. *See Wahl v. Fusco*, 1996 TTAB LEXIS 50 at *3 (TTAB April 23, 1996)

("In a situation where there has been continuing avoidance of discovery, the Board will enter a default judgment against the disobedient party."); *See also Pinseeker Golf Corp. v. Pin High Financial Management, Inc.*, 1996 TTAB LEXIS 461 at *3 (TTAB July 3, 1996) (entry of default judgment warranted given deliberate noncompliance and willful disregard for discovery obligations, as evidenced by complete lack of response to interrogatories and production requests) (non-precedential opinion).

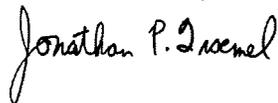
Applicant admits that it does not intend to participate in the required discovery conference. Applicant's failure to participate shows a willful disregard for Applicant's obligations and for this Court's Order. As a result, default judgment should be entered against Applicant.

WHEREFORE, Opposer respectfully requests that sanctions in the form of default judgment be entered against Applicant, and in favor of Opposer.

Dated: March 12, 2010

Respectfully submitted,

PEG PEREGO U.S.A., INC.



By: _____
One of its Attorneys

Jonathan P. Froemel
BARNES & THORNBURG LLP
P.O. Box 2786
Chicago, IL 60690-2786
(312) 357-1313

CERTIFICATE OF TRANSMITTAL

I hereby certify that this correspondence is being electronically transmitted, in PDF format to the Trademark Trial and Appeal Board through the Electronic System for Trademark Trial and Appeals (ESTTA) on March 12, 2010.

Jonathan P. Duemel

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Motion For Sanctions has been served on counsel for Applicant KUNSHAN GEOBY PARAGON CO., LTD, by emailing said copy on March 12, 2010 to:

Stephen C. Beuerle
Procopio Cory Hargreaves & Savitch LLP
530 B Street, Suite 2100
San Diego, CA 92101-4469

Carol Boruta

EXHIBIT A

Froemel, Jonathan

From: Beuerle, Stephen C. [scb@procopio.com]
Sent: Friday, December 18, 2009 4:59 PM
To: Froemel, Jonathan
Subject: RE: Peg Perego opposition

Jon,

My understanding is that client is going to let this application go abandoned. I will let you know if anything changes, but that is my understanding.

Stephen C. Beuerle
Registered Patent Attorney



Procopio, Cory, Hargreaves & Savitch LLP
530 B Street, Suite 2100
San Diego, CA 92101
direct: 619.515.3267
direct fax: 619.744.5467
scb@procopio.com
www.procopio.com

Please consider the environment before printing this email. 

From: Froemel, Jonathan [mailto:Jonathan.Froemel@btlaw.com]
Sent: Friday, December 18, 2009 2:10 PM
To: Beuerle, Stephen C.
Subject: Peg Perego opposition

Stephen,

Under the TTAB scheduling order, we are supposed to conduct our discovery conference by December 20. I'd prefer not to work Sunday, but are you available any time on Monday?

Let me know.

Thanks.

Jon

Jonathan P. Froemel
BARNES & THORNBURG LLP
Suite 4400
One North Wacker Drive
Chicago, IL 60606-2833
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312-759-5646 (Fax)
312-357-1313 (Main)
jfroemel@btlaw.com

3/11/2010

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mailgw01.procopio.com made the following annotations

Fri Dec 18 2009 14:58:26

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EXHIBIT B

Froemel, Jonathan

From: Beuerle, Stephen C. [scb@procopio.com]
Sent: Monday, December 21, 2009 5:12 PM
To: Froemel, Jonathan
Subject: RE: Peg Perego opposition

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Stephen C. Beuerle
Registered Patent Attorney



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scb@procopio.com
www.procopio.com

Please consider the environment before printing this email. 

From: Froemel, Jonathan [mailto:Jonathan.Froemel@btlaw.com]
Sent: Monday, December 21, 2009 3:02 PM
To: Beuerle, Stephen C.
Subject: RE: Peg Perego opposition

Thanks Stephen. Do you know whether you plan to expressly abandon? If not, I will likely need to pursue a motion for default.

Jon

Jonathan P. Froemel
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Suite 4400
One North Wacker Drive
Chicago, IL 60606-2833
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312-759-5646 (Fax)
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jfroemel@btlaw.com

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Sent: Friday, December 18, 2009 4:59 PM
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mailgw01.procopio.com made the following annotations

Fri Dec 18 2009 14:58:26

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