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

Goodman

Mailed: May 14, 2012

Opposition No. **91196483**

COVERT SKATE, INC.

v.

KURTIS RODERICK BECKSTROM

Before Ritchie, Lykos and Shaw, Administrative Trademark Judges.

By the Board:

On February 23, 2012, the Board issued an order to show cause for opposer's failure to file a trial brief under Trademark Rule 2.128(a)(3). On March 27, 2012, opposer responded by indicating it had not lost interest in this case, also asking "the TTAB to reconsider and grant motion in [his] favor." Applicant has not filed any response to opposer's filing.[1]

Opposer submits that in December 2011, applicant contacted opposer "with a request to resolve the opposition" and opposer was interested in "finding a resolution" but since "February 2012, the Defendant has made no further contact." Opposer states that opposer "made effort to reach

[1] Proof of service on applicant of this filing was filed with the Board on March 30, 2012.

an agreement . . . on more than one occasion; whereas the Defendant has not followed through." Opposer submits that its filing and accompanying exhibits "show the TTAB the Plaintiff's interest in continuing the opposition" and requests "a motion be granted in the Plaintiff's favor." Opposer then argues the merits of the opposition, and asks that "the TTAB dismiss the Defendant's application for the COVERT mark with prejudice." Opposer's filing appears to be a combined response to the order to show cause and a brief on the case, accompanied by exhibits. No other motions accompanied opposer's filing.

Because opposer has shown it has not lost interest in the matter, the show cause order is discharged.

With respect to the remainder of the filing which the Board considers to be opposer's brief on the case, because opposer failed to file a motion to reopen pursuant to Fed. R. Civ. P. 6(b)(1)(B), the brief on the case will be given no consideration. see TBMP Section 536 (3d ed. 2011) ("In instances where the show cause order has been discharged and the plaintiff has submitted its main brief without including a motion to reopen its time . . . the plaintiff's main brief will be given no consideration")[2]; *cf. M-Tek Inc. v. CVP*

[2] To the extent opposer's arguments regarding settlement could be considered to be directed to reopening the time to file its brief on the case, the existence of settlement discussions does not justify opposer's inaction or excuse its failure to comply with the deadlines imposed by the Rules. *Vital Pharmaceuticals*

Systems Inc., 17 USPQ2d 1070 (TTAB 1990)(giving no consideration to untimely reply brief, granting motion to strike). Accordingly, the brief on the case has not been considered.

A review of the record shows that opposer has taken no testimony nor submitted any other evidence in support of its claims during its testimony period, and that applicant, in its answer, did not admit any dispositive allegations. The exhibits attached to the notice of opposition are not evidence on behalf of opposer unless, during the time for taking testimony, properly identified and introduced into evidence as exhibits. See Trademark Rule 2.122(c); TBMP Section 704.05(a) (3d ed. 2011).

If an order to show cause has been discharged but there is no evidence or other testimony in the record, the Board, in lieu of resetting the times for filing remaining briefs on the case, may enter judgment against plaintiff for a failure to prove its case. *See e.g., Gaylord Entertainment Co. v. Calvin Gilmore Productions Inc.*, 59 USPQ2d 1369 (TTAB 2000) (discharging order to show cause, denying motion to

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Inc. v. Kronholm, 99 USPQ2d 1708 (TTAB 2011). Therefore, such discussions would not establish excusable neglect to reopen time. *Id*. The Board also notes that even if opposer had been able to show excusable neglect to reopen its time to file its brief on the case, reopening time would have been futile inasmuch as there is no evidence of record as discussed herein. *Id*. at 1710 n.11.

reopen, and dismissing proceeding for lack of evidence in the record); TBMP Section 536.

In view thereof, judgment is hereby entered against opposer, and the opposition is dismissed with prejudice.