

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Baxley

Mailed: May 19, 2015

Opposition No. 91200183

The Worlds Pageants, LLC and Camila
Productions Ltd.

v.

Miss G-String International LLC

Andrew P. Baxley, Interlocutory Attorney:

On April 17, 2015, following the close of Applicant's testimony period, Applicant filed a motion to issue a notice of default under Fed. R. Civ. P. 55(a) in view of Opposers' alleged failure to serve a transcript of testimony, together with copies of any exhibits to that testimony within thirty days of the taking of that testimony, in compliance with Trademark Rule 2.123. Although Opposers did not file a brief in response to Applicant's motion, the Board, in its discretion, declines to grant that motion as conceded and instead elects to decide the motion on the merits. *See* Trademark Rule 2.127(a).

The Board does not issue notices of default under Fed. R. Civ. P. 55(a) for failure to serve transcripts of testimony depositions.¹ Rather, the remedy for any such failure is under Trademark Rule 2.125(a), which provides in relevant part as follows:

¹ Notices of default under Fed. R. Civ. P. 55(a) are issued to defendants who fail to timely file answers. *See* Trademark Rules 2.106(c) and 2.114(c); TBMP § 312 (2014).

If the transcript with exhibits is not served on each adverse party within thirty days or within an extension of time for the purpose, any adverse party which was not served may have remedy by way of a motion to the Trademark Trial and Appeal Board to reset such adverse party's testimony and/or briefing periods, as may be appropriate. If the deposing party fails to serve a copy of the transcript with exhibits on an adverse party after having been ordered to do so by the Board, the Board, in its discretion, may strike the deposition, or enter judgment as by default against the deposing party, or take any such other action as may be deemed appropriate.

Further, Applicant has not identified any specific testimony deposition that Opposers took during their testimony period and of which they allegedly failed to serve a transcript.² In view thereof, Applicant's motion is denied.

The Board deems the filing of Applicant's motion to have tolled the running of dates herein. Proceedings herein are resumed. Remaining dates are reset as follows.

Opposer's Rebuttal Disclosures Due **5/28/2015**

Opposer's 15-day Rebuttal Period Ends **6/27/2015**

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125. Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129. If either of the parties or their attorneys should have a change of address, the Board should be so informed promptly.

² The record herein does not indicate that Opposer took any testimony depositions during its testimony period. Opposer, however, filed under notice of reliance a transcript of the testimony deposition of its witness Gracinda Cardoso that was taken on June 18, 2013 in Opposition No. 91206024. See Trademark Rule 2.122(f) and TBMP § 704.13 regarding submission of testimony from other proceedings.