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Filing date: **11/20/2011**

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

Proceeding	91200225
Party	Plaintiff World Gym International IP, LLC
Correspondence Address	ELLIOT B GIPSON FAYER GIPSON LLP 2029 CENTURY PARK EAST STE 3535 LOS ANGELES, CA 90067 UNITED STATES egipson@fayergipson.com, rsilverman@ghplaw.com, mtylke@ghplaw.com, kside@ghplaw.com
Submission	Motion for Sanctions
Filer's Name	Elliot B. Gipson
Filer's e-mail	egipson@fayergipson.com
Signature	/Elliot B. Gipson/
Date	11/20/2011
Attachments	Opposer's Motion For Terminating Sanctions (11.20.2011).pdf (8 pages) (1127044 bytes) Gipson Decl. ISO Opposer's Motion for Terminating Sanctions (11.20.2011).pdf (27 pages)(2871042 bytes)

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

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WORLD GYM INTERNATIONAL IP, LLC:	:	Mark: WORLD [X] [X]
Opposer,	:	
	:	Application No. 790711980
v.	:	
	:	Opposition No. 91200225
JACEK WAKSMUNDZKI	:	
	:	
Applicant.	:	
<hr/>	:	

OPPOSER'S MOTION FOR TERMINATING SANCTIONS

I. INTRODUCTION

By all indications, Applicant Jacek Waksmundzki ("Applicant"), a resident of Poland, has abandoned his application for the WORLD [X] [X] mark in the United States. Opposer World Gym International IP, LLC ("World Gym"), owner of the world famous WORLD GYM and WORLD word and design marks, first indicated its intent to oppose Mr. Waksmundzki's application on May 20, 2011 and filed its opposition on June 10, 2011. Despite Opposer's granting of a sixty (60) day extension to respond to the notice of opposition at the outset of this proceeding, apparently counsel for Mr. Waksmundzki has failed to get in touch with him since that time. Although counsel for Mr. Waksmundzki filed an answer, he has refused to hold a discovery conference with counsel for Opposer on the basis of his inability to reach his client- despite being warned that Opposer would move for terminating sanctions should Applicant refuse to participate in the initial discovery conference. While Opposer is sympathetic to Applicant's counsel's plight, Applicant's counsel has had more than enough time (6 months) to receive direction from his client. The fact that Applicant is a foreign national is no excuse for its

failure to meet its discovery obligations. Given the pattern of delay, it is clear that Applicant, through his non-communication with his attorney, has constructively abandoned his application.

Therefore, Opposer hereby moves for an entry of judgment against Applicant as a sanction for its failure to comply with the Board's order regarding participation in the initial discovery conference. *See* Trademark Rule 2.120(g); *Kairos Institute of Sound Healing, LLC v. Doolittle Gradens LLC*, 88 USPQ2d 1541, 1543 n.4 (TTAB 2008). Alternatively, Opposer requests the Board enter an Order to Show Cause why judgment should not be entered against Applicant and seeks that the discovery and trial deadlines only be reset for Opposer only. *See* 37 CFR 2.120(g)(1). Opposer's motion is based upon this brief, the attached Declaration of Elliot B. Gipson (hereinafter, "Gipson Decl."), the docket instruments filed in this case ("Docket No.") and whatever other documents and/or evidence that the Trademark Trial and Appeal Board ("TTAB") by law may consider.

II. BACKGROUND FACTS

Opposer notified Applicant's counsel of its intention to oppose Applicant's registrations that are the subject of this opposition on May 20, 2011. Gipson Decl. at ¶2; Ex. 1. Opposer filed its opposition on June 10, 2011. Docket No. 1; Gipson Decl. at ¶3. On July 25, 2011, Applicant's counsel's office called counsel for Opposer and requested an extension to answer. Gipson Decl. at ¶4. Applicant's counsel informed Opposer's counsel that Applicant's counsel had not been able to get into touch with Applicant. *Id.* As a professional courtesy, Opposer agreed to a sixty (60) day extension for Applicant. *Id.*

On September 22, 2011, the day that the answer was due, Applicant's counsel requested another extension in a letter addressed to Opposer's counsel. *Id.* at ¶5; Ex. 2. This letter

documented Applicant's counsel's inability to reach Applicant regarding instructions with how to proceed in the current case. Gipson Decl. at ¶5; Ex. 2.

That same day, Opposer responded to Applicant's counsel, declining an additional extension as Opposer had already granted Applicant's counsel a previous sixty (60) day extension within which to reach Applicant. *Id.* at 6; Ex. 3. In response, Applicant's counsel filed an answer on September 22, 2011. Docket No. 7.; Gipson Decl. at ¶7.

Discovery opened on October 22, 2011. Docket No. 2; Gipson Decl. at ¶8. On October 25, 2011, Opposer served its initial disclosures upon Applicant. Gipson Decl. at ¶8; Ex. 4. On October 25, 2011, Opposer's counsel also called Applicant's counsel in order to have the required discovery conference. *Id.* at ¶9. Applicant's counsel was unprepared to discuss the topics required in the discovery conference and informed Opposer's counsel that he had still been unable to reach his client. *Id.* After the call, Opposer's counsel emailed Applicant's counsel a summary of the conversation. *Id.*; Ex. 5.

On October 28, 2011, Applicant's counsel sent Opposer's counsel a letter saying that he "had not yet heard from [his] client so we cannot go over Rule 26(f)." Gipson Decl. at ¶ 10; Ex. 6. That same day, Opposer's counsel sent Applicant's counsel a response requesting to have a Rule 26(f) conference notwithstanding his inability to get in touch with his client. Gipson Decl. at ¶11; Ex. 7. That letter warned Applicant's counsel that Opposer was reserving its rights to move for sanctions, including terminating sanctions, if Applicant refused to have the discovery conference. Gipson Decl. at ¶11; Ex. 7. Counsel for Opposer never received a response from Applicant's counsel regarding this letter. Gipson Decl. at ¶11; Ex. 7.

On November 7, 2011, Opposer's counsel sent Applicant's counsel another letter requesting an immediate discovery conference. Gipson Decl. at ¶12; Ex. 8. The letter further

stated: [A]s you have refused to discuss matters involved in a discovery conference, please be advised that this letter serves as World Gym's notice that it intends to move for terminating sanctions if you are not willing or able to participate in a discovery conference." Gipson Decl. at ¶12; Ex. 8. Opposer's counsel never received a response from Applicant's counsel regarding this letter. Gipson Decl. at ¶12.

On November 18, 2011, Opposer served Opposer's First Set of Interrogatories, Opposer's First Set of Document Requests, and Opposer's First Set of Requests for Admission on counsel for Applicant via U.S. Mail. *Id.* at ¶13.

Initial Disclosures are due on November 21, 2011. To date, Opposer has not received the initial disclosures from Applicant or Applicant's counsel. *Id.* at ¶14.

As of the date of this filing, Opposer's counsel has heard nothing from Applicant or Applicant's counsel indicating that Applicant intends to defend against this opposition. *Id.* at ¶15. Every communication Opposer's counsel has had with Applicant's counsel indicates a continual inability for Applicant's counsel to reach Applicant. *Id.*

III. LAW

"If a party fails to comply with an order of the Trademark Trial and Appeal Board *relating to discovery*, including a protective order, *the Board may make any appropriate order*, including any of the orders provided in Rule 37(b)(2) of the Federal Rules of Civil Procedure..." Trademark Rule 2.120(g)(1) (emphasis added).

Rule 37(b)(2) of the Federal Rules of Civil Procedure provides:

If a party ... fails to obey an order to provide or permit discovery...the court where the action is pending may issue further just orders. They may include the following: (i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims; (ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in

evidence; (iii) striking pleadings in whole or in part; (iv) staying further proceedings until the order is obeyed; (v) dismissing the action or proceeding in whole or in part; (vi) rendering a default judgment against the disobedient party...

“The law is clear that if a party fails to comply with an order of the Board relating to discovery, including an order compelling discovery, the Board may order appropriate sanctions as defined in Trademark Rule 2.120(g)(1) and Fed.R.Civ.P. 37(b)(2), including entry of judgment.” *MHW Ltd. V. Simex, Aussenhandelsgesellschaft Savelsberg KG*, 59 USPQ2d 1477, 1478 (2001). Moreover, “Trademark Rule 2.120(g)(1) also provides for possible imposition of a sanction *when a party fails to participate in the required discovery conference.*” *Kairos Institute of Sound Healing, LLC v. Doolittle Gradens LLC*, 88 USPQ2d 1541, 1543 n.4 (TTAB 2008) (emphasis added).

IV. ARGUMENT

TERMINATING SANCTIONS ARE WARRANTED UNDER THE LAW BECAUSE OF OPPOSER’S DISOBEDIENCE TO THE COURT’S ORDER AND OPPOSER’S CONTINUED PATTERN OF DELAY

Applicant has refused to comply with the TTAB’s initial scheduling order regarding the discovery conference despite the fact that Opposer’s counsel gave Applicant’s counsel notice on both October 28, 2011 and November 7, 2011 that it reserved its right to move for terminating sanctions should Applicant refuse to participate in a discovery conference. Gipson Decl. at ¶¶11-12. The facts are undisputed: Opposer’s counsel has requested on numerous occasions to hold the mandatory discovery conference; Applicant’s counsel has refused to hold the conference based on his inability to reach his client. Gipson Decl. at ¶¶ 9-12. There is no statute or case law permitting Applicant’s failure to conference with Opposer regarding the initial discovery

conference just because he is a foreign national and Applicant's counsel has not been able to contact him.

Moreover, Applicant's counsel's inability to reach his client regarding this proceeding, despite being on notice since May 20, 2011 (six months from the date of this filing), indicates Applicant's constructive abandonment of his application. Gipson Decl. at ¶2. Finally, given the past sixty (60) extension for Applicant to respond to the notice of opposition on account of Applicant's counsel's inability to reach Applicant, and given the fact that counsel for Opposer gave counsel for Applicant ample warning that Opposer intended to move for terminating sanctions if the Applicant did not participate in a discovery conference, there is absolutely no reason to believe that Applicant is going to become more responsive to his attorney in the future if given more time. See Gipson Decl. at ¶¶4; 11-12. The Board has the power to terminate this proceeding in the present circumstances. *Kairos Institute of Sound Healing, LLC*, 88 USPQ2d 1541, 1543 n.4. Here, given the fact that Applicant is apparently unreachable or interested in the proceedings, the only meaningful sanctions would be those terminating this proceeding. See *i.e. Catfish Anglers Together, Inc.*, 194 USPQ 100; *Baron Phillippe de Rothschild S.A.*, 55 USPQ2d 1854; *Unicut Corporation*, 222 USPQ 344.

CONCLUSION

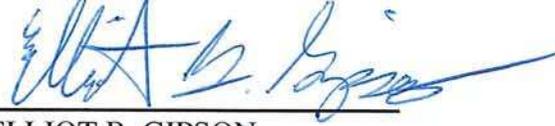
WHEREFORE, Opposer respectfully requests that the Board terminate this proceeding and enter judgment against Applicant. Trademark Rule 2.120(g); Fed. R. Civ. Proc. 37(b). Alternatively, Registrant respectfully requests that the Board issue an Order to Show Cause why an entry of judgment should not be entered against Applicant and reset the discovery and trial dates for Opposer only. *Id.*

DATED: November 20, 2011

Respectfully submitted,

FAYER GIPSON LLP
A Limited Liability Partnership
ELLIOT B. GIPSON

By:



ELLIOT B. GIPSON
Attorneys for Opposer
FAYER GIPSON LLP
2029 Century Park East, Suite 3535
Los Angeles, CA 90067
Telephone: 310-557-3558
Facsimile: 310-557-3589
egipson@fayergipson.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing OPPOSER'S MOTION FOR TERMINATING SANCTIONS was served on Petitioner, this November 20, 2011 via first class mail, postage prepaid to:

Horst M. Kasper, Esq.
Attorney for Applicant
13 Forest Drive
Warren, NJ 07059

By: 

Elliot B. Gipson

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being filed with the United States Patent and Trademark Office via the Electronic System for Trademark Trials and Appeals (ESTTA) on the date shown below.

Dated: November 20, 2011

By: 

Elliot B. Gipson

FAYER GIPSON LLP
2029 Century Park East, Suite 3535
Los Angeles, CA 90067
Telephone: 310-557-3558
Facsimile: 310-557-3589

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

<hr/>	:	Mark: WORLD [X] [X]
WORLD GYM INTERNATIONAL IP, LLC:	:	
Opposer,	:	Application No. 790711980
v.	:	Opposition No. 91200225
JACEK WAKSMUNDZKI	:	
Applicant.	:	
<hr/>	:	

**DECLARATION OF ELLIOT B. GIPSON IN SUPPORT OF
OPPOSER’S MOTION FOR TERMINATING SANCTIONS**

I, ELLIOT B. GIPSON, declare and say as follows:

1. I am an attorney licensed to practice before the bar of the District of Columbia and a partner of the law firm of Fayer Gipson LLP, counsel for Opposer World Gym International IP, LLC (“Opposer”). I am the lead lawyer for Opposer in this matter and have been involved in all aspects of this opposition since its inception. I am over 18 years of age, and have personal knowledge of each and every fact stated in this declaration. If called as a witness, I could and would competently testify hereto. This declaration is submitted in support of Opposer’s Motion for Terminating Sanctions.

2. Opposer notified Applicant’s counsel of its intention to oppose Applicant’s registrations that are the subject of this opposition on May 20, 2011. A true and correct copy of this letter is attached as **Exhibit 1**.

3. Opposer filed its opposition on June 10, 2011. Docket No. 1.

4. On July 25, 2011, the Applicant’s counsel’s office called me and requested an extension to answer. I was informed that Applicant’s counsel had not been able to get into touch with Applicant. As a professional courtesy, Opposer agreed to a sixty (60) day extension for Applicant.

5. On September 22, 2011, the day that the answer was due, Applicant's counsel requested another extension. This letter documented Applicant's counsel's inability to reach Applicant regarding instructions with how to proceed in the current case. A true and correct copy of this letter request is attached as **Exhibit 2**.

6. That same day, Opposer responded to Applicant's counsel, declining an additional extension as Opposer had already granted Applicant's counsel a previous sixty (60) day extension within which to reach Applicant. A true and correct copy of this letter response is attached as **Exhibit 3**.

7. On information and belief, Applicant filed an answer on September 22, 2011. Docket No. 7. On information and belief, Applicant's counsel did not successfully communicate with Applicant regarding Applicant's intent to defend this opposition prior to filing the answer.

8. Discovery opened on October 22, 2011. Docket No. 2. On October 25, 2011, Opposer served its initial disclosures upon Applicant. A true and correct copy of Applicant's initial disclosures are attached as **Exhibit 4**.

9. On October 25, 2011, I called Applicant's counsel in order to have the required discovery conference. Applicant's counsel was unprepared to discuss the topics required in the discovery conference and informed me that he had still been unable to reach his client. I emailed Applicant's counsel a summary of our telephone call. A true and correct copy of that email is attached as **Exhibit 5**.

10. On October 28, 2011, Applicant's counsel sent me a letter saying that he "had not yet heard from [his] client so we cannot go over Rule 26(f)." A true and correct copy of that email is attached as **Exhibit 6**.

11. That same day, I sent Applicant's counsel a response requesting to have a Rule 26(f) conference notwithstanding his inability to get in touch with his client. That letter warned Applicant's counsel that Opposer was reserving its rights to move for sanctions, including terminating sanctions, if Applicant refused to have the discovery conference. I never received a response from Applicant's counsel regarding this letter. A true and correct copy of this letter is

attached as **Exhibit 7**.

12. As I had not heard back from Applicant's counsel, on November 7, 2011, I sent Applicant's counsel another letter requesting an immediate discovery conference. The letter further stated: [A]s you have refused to discuss matters involved in a discovery conference, please be advised that this letter serves as World Gym's notice that it intends to move for terminating sanctions if you are not willing or able to participate in a discovery conference." I never received a response from Applicant's counsel regarding this letter. A true and correct copy of this letter is attached as **Exhibit 8**.

13. On November 18, 2011, Opposer served Opposer's First Set of Interrogatories, Opposer's First Set of Document Requests, and Opposer's First Set of Requests for Admission on counsel for Applicant via U.S. Mail.

14. Initial Disclosures are due on November 21, 2011. To date, I have not received the initial disclosures from Applicant or Applicant's counsel.

15. As of the date of this filing, I have heard nothing from Applicant or Applicant's counsel indicating that Applicant intends to defend against this opposition. To the contrary, every communication I have had with Applicant's counsel indicates a continual inability to reach his client.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed on November 20, 2011, at Los Angeles, California.



ELLIOT B. GIPSON

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECLARATION OF ELLIOT B. GIPSON IN SUPPORT OF OPPOSER'S MOTION FOR TERMINATING SANCTIONS was served on Petitioner, this November 20, 2011 via first class mail, postage prepaid to:

Horst M. Kasper, Esq.
Attorney for Applicant
13 Forest Drive
Warren, NJ 07059

By: 
Elliot B. Gipson

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being filed with the United States Patent and Trademark Office via the Electronic System for Trademark Trials and Appeals (ESTTA) on the date shown below.

Dated: November 20, 2011

By: 
Elliot B. Gipson

FAYER GIPSON LLP
2029 Century Park East, Suite 3535
Los Angeles, CA 90067
Telephone: 310-557-3558
Facsimile: 310-557-3589

EXHIBIT 1

LAW OFFICES
GIPSON HOFFMAN & PANGIONE
A PROFESSIONAL CORPORATION
1901 AVENUE OF THE STARS
SUITE 1100
LOS ANGELES, CALIFORNIA 90067-6002
(310) 556-4660
FAX (310) 556-8945

WRITER'S DIRECT DIAL NUMBER:
310.557.8830

WRITER'S DIRECT INTERNET E-MAIL:
EGipson@ghplaw.com

OUR FILE NO.:
4023.2.7

May 20, 2011

VIA MAIL AND FACSIMILE

Horst M. Kasper
Kasper and Laughlin
13 Forest Drive
Warren, NJ 07059
Fax Number: 908-526-6977

**Re: WORLD IXI IXI: TRADEMARK APPLICATION NO. 79071980
NOTICE OF OPPOSITION AND LIKELIHOOD OF CONFUSION**

Dear Mr. Kasper:

We are attorneys representing World Gym International, LLC and World Gym International IP, LLC (collectively, "World Gym" or the "Company") in the above-referenced matter. We understand that you represent Mr. Jacek Waksmundzki in his application for the mark WORLD [X] [X] in classes 41 and 44.

OWNERSHIP OF WORLD GYM MARKS

World Gym is the owner of certain World Gym related marks, including marks registered in the United States and throughout the world. The World Gym brand was founded by Joe Gold in 1976 and has accumulated great value and name recognition by its continuous presence in the health and fitness marketplace for more than thirty years. Among other marks, World Gym owns the registered marks for:

- World, registration no. 1911887;
- World Gym, registration no. 1354193;
- World Gym, registration no. 1783000;
- World Gym, registration no. 1791584;
- World Gym, registration no. 2268311;
- World Gym, registration no. 2499267; and
- World Gym Fitness Centers, registration no. 1856427.

As the owner of these valuable marks, World Gym takes active steps to police their use. Only World Gym's licensees are allowed to use its marks in the United States. Your client is not a licensee of World Gym.

May 20, 2011
Horst M. Kasper, Esq.
Re: "WORLD [X] [X]"
Page -2-

MR. WAKSMUNDZKI'S PROPOSED MARKS

Mr. Waksmunzki has applied to register WORLD [X] [X] in class 41 "for consulting in the field of education; information about education; organizing academic competitions" and in class 44 "for medical services, namely, conventional and alternative medicine."

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely that a potential consumer would be confused or mistaken or deceived as to the source of the goods and/or services of the applicant and registrant. See 15 U.S.C. §1052(d). The court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) listed the principal factors to be considered when determining whether there is a likelihood of confusion under Section 2(d). Here the almost identical nature of the marks indicates that there would be a likelihood of confusion. Moreover, your client's proposed use of the mark WORLD [X] [X] in classes 41 and 44 would dilute World Gym's famous marks, causing damage to World Gym's most valuable asset – its hard won brand recognition in the health and fitness space.

CONCLUSION

Because of the likelihood of confusion and dilution issues, World Gym respectfully requests that Mr. Waksmundzki withdraw his applications for the WORLD [X][X] mark in classes 41 and 44. Please contact me prior to May 31, 2011 to let me know if Mr. Waksmundzki will withdraw the requested applications. As a formal matter, nothing in this letter shall constitute a waiver of any of World Gym's rights, all of which are explicitly reserved. We thank you in advance for your prompt cooperation in this matter.

Very truly yours,



Elliot B. Gipson

EXHIBIT 2

Horst M. Kasper, Ph.D.

*Attorney at Law
Patents-Trademarks-Copyrights*

Dr. rer. nat. Horst M. Kasper, J.D.

13 Forest Drive
Warren, New Jersey 07059
Tel.: (908) 526 6100
(908) 526 1717
Fax: (908) 526 6977
e-mail: patentmal@aol.com

**ELLIOT B. GIPSON
FAYER GIPSON LLP
2029 Century Park East STE 3535
Los Angeles, CA 90067**

Warren, September 22, 2011

Your File No.	4023.2.7	Our Docket:	LAC807M1
Mark:	WORLD IXI IXI and Design	Filing Date:	February 19, 2009
Serial No.	79/071,980		
Applicant:	Jacek Waksmundzki		
Opposition No.	91200225		

Dear Mr. Gibson,

We represent the applicant, Jacek Waksmundzki, before the U.S. Patent and Trademark Office in case of a trademark application serial no. 79/071,980 for the mark WORLD IXI IXI. You filed a Notice of Opposition on behalf of your client, World Gym International IP, LLC, against registration of the said mark (Opposition No. 91200225). Today, on September 22, 2011, a response to the Notice of Opposition is due at the TTAB. Since we are having a problem to contact the applicant who resides overseas, we would like to ask for your consent for a 30-day extension of time to file a response to the Notice of Opposition. The additional time is needed to file an answer to the Notice of Opposition. We made the following attempts to contact a legal representative of the applicant in Poland:

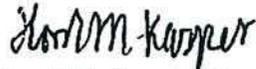
-phone call to a legal representative of the applicant in Poland on August 12, 2011
(message left on voice mail)

-phone call to a legal representative of the applicant in Poland on September 1, 2011
(message left on voice mail)

-phone call to a legal representative of the applicant in Poland on September 21, 2011
(the legal representative promised to provide the applicant's instructions by September
22, 2011)

-phone call to a legal representative of the applicant in Poland on September 22, 2011
(message left on voice mail)

Very truly yours,



Horst M. Kasper, Esq.

am

EXHIBIT 3

FAYER GIPSON LLP
2029 CENTURY PARK EAST, SUITE 3535
LOS ANGELES, CALIFORNIA 90067-6002
TEL: (310) 557-3558
FAX: (310) 557-3589
EGIPSON@FAYERGIPSON.COM

September 22, 2011

VIA MAIL AND EMAIL

Horst M. Kasper
Kasper and Laughlin
13 Forest Drive
Warren, NJ 07059
patentmal@aol.com

**Re: WORLD IXI IXI: TRADEMARK APPLICATION NO. 79071980;
OPPOSITION NO. 91200225**

Dear Mr. Kasper:

As you know, we are attorneys representing World Gym International IP, LLC ("World Gym" or the "Company") in the above-referenced matter. This letter is being sent in response to your letter dated September 22, 2011 and follows up the telephone call I had with your colleague this morning. Per the telephone conversation earlier today, World Gym is not willing to stipulate for a further extension of time for Mr. Jacek Waksmundzki to file his answer in the above referenced matter.

As you are aware, World Gym previously stipulated to a sixty (60) day extension on July 25, 2011 as a professional courtesy even though Mr. Waksmundziki's response was due one day prior on July 24, 2011. Now, sixty (60) days later, on the date upon which your client's response is due, you have requested a further thirty (30) day extension. I understand from your letter that you have made four (4) attempts to reach your client since the sixty (60) day extension has been granted – all of which have been unsuccessful. Although World Gym is sympathetic to your plight as it can be difficult to reach clients located overseas, your client has had ninety (90) days within which to respond to World Gym's opposition. Moreover, we first notified you of World Gym's opposition even earlier prior to filing – on May 20, 2011. World Gym has given you more than a reasonable amount of time to locate and receive a response from your client. From all available evidence, it would seem that your client has simply lost interest in prosecuting its application to register the marks. Therefore, World Gym cannot agree to a further extension within which to answer its opposition in this proceeding.

As a formal matter, nothing in this letter shall constitute a waiver of any of World Gym's rights, claims, defenses or privileges, all of which are explicitly reserved. Thank you.

Very truly yours,

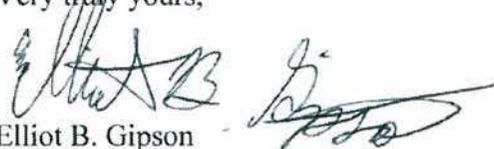

Elliot B. Gipson

EXHIBIT 4

1. Individuals Having Discoverable Information Supporting World Gym's Claims

Pursuant to Fed. R. Civ. P. 26(a)(1)(A)(i), World Gym identifies the individuals set forth below, to the extent currently known to World Gym, as likely to have discoverable information that World Gym may use to support its claims and/or defenses in this action. In making these disclosures, World Gym does not waive its right to object to discovery of information from any of these individuals, including by deposition or otherwise, or based on the attorney-client privilege, work product immunity, or both. World Gym does not consent to authorize any party to communicate with its current or former employees, officers or board members. The individuals listed have information related to the World Gym® marks and are employed by World Gym and/or its affiliates. World Gym's corporate address is located at 1901 Avenue of the Stars, Suite 1100, Los Angeles, CA 90067; telephone (310) 556-4660; however, these individuals should not be contacted directly, but should be contacted through World Gym's attorneys, Fayer Gipson LLP, 2029 Century Park East, Suite 3535, Los Angeles, CA 90067; telephone (310) 557-3558.

#	Names
1.	Gaius Cammilleri
2.	Karin Michael
3.	Helen Rockey

World Gym also anticipates that there are individuals known to Jacek Waksmundzki ("JK") who have relevant knowledge. World Gym may seek information from persons identified by JK to support its claims and defenses. World Gym expressly reserves the right to identify or to call as witnesses additional or different individuals if, during the course of discovery and investigation relating to this case, World Gym learns that such additional or different individuals have relevant knowledge.

2. Documents that World Gym May Use to Support Its Claims or Defenses

Pursuant to Fed. R. Civ. P. 26(a)(1)(A)(ii), and based upon presently available information, World Gym discloses the following documents, electronically stored information,

and tangible things set forth below that are in World Gym's possession, custody, or control that World Gym may use to support its claims and/or defenses. The documents are located at 1901 Avenue of the Stars, Suite 1100, Los Angeles, CA 90067 and 2029 Century Park East, Suite 3534, Los Angeles, CA 90067.

#	Documents
1.	Documents, electronically stored information, and tangible things related to Opposer's WORLD GYM® marks and use of the WORLD GYM® marks.
2.	Documents, electronically stored information, and tangible things related to Applicant's WORLD [X] [X] marks and use of such marks.

World Gym reserves the right to produce documents and things, or to identify and use documents and things from additional categories if, during the course of discovery and investigation relating to this case, World Gym learns that such additional documents and things or such additional categories of documents and things, support its claims or defenses. World Gym also reserves the right to respond to and/or rebut any contentions and allegations that JK may make.

DATED: October 25, 2011

Respectfully submitted,

FAYER GIPSON LLP
A Limited Liability Partnership
ELLIOT B. GIPSON

By: _____



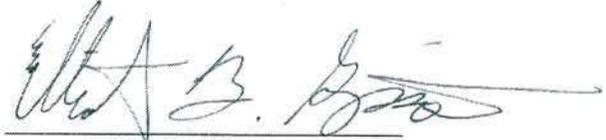
ELLIOT B. GIPSON
Attorneys for Registrant
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2029 Century Park East, Suite 3535
Los Angeles, CA 90067
Telephone: 310-557-3558
Facsimile: 310-557-3589

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing OPPOSER'S INITIAL DISCLOSURES PURSUANT TO RULE 26(a)(1) was served on Petitioner, this 25th day of October, 2011 by sending the same via first-class mail, postage prepaid, to:

Horst M. Kasper
13 Forest Drive
Warren, N.J. 07059

With a courtesy copy sent via email to: patentmal@aol.com.

A handwritten signature in black ink, appearing to read "Elliot B. Gipson", written over a horizontal line.

Elliot B. Gipson

EXHIBIT 5

Elliot Gipson

From: Elliot Gipson
Sent: Tuesday, October 25, 2011 6:53 PM
To: 'patentmal@aol.com'
Subject: World Gym International IP, LLC v. Jacek Waksmundzki: Opposition No. 91200225
Our docket: LAC807
Attachments: Initial Disclosures (10.25.2011).pdf

Dear Mr. Kasper:

This email follows up our telephone call this evening regarding our discovery conference.

Notes from Our Call

Please let me know if I misstate or miss anything. I said I was calling regarding the discovery conference and asked whether your client intended to defend this opposition or abandon his application. You stated that you would call me back later this week so that we can go over the Rule 26(f) conference. You also stated that you were going to try to get in touch with your client as you had not yet had a chance to speak with him.

Follow Up to the Call

After you speak with your client, please let me know if he is going to defend this opposition or abandon his application. It would be a great savings of time and resources if we did not need to litigate this unnecessarily. However, if you cannot reach your client, then we need to move ahead with the Rule 26 conference regardless.

Rule 26(f) Conference

I anticipate the Rule 26(f) conference being short as I do not see anything special regarding this situation other than the fact that your client resides in Poland. Please advise if your client will be willing to take a deposition in the United States. Other than this issue, I am ok with using the traditional tools of discovery under the regular rules. I do not think we need to make any changes as to the timing of the trial schedule. I believe the parties respective pleadings speak for themselves regarding the claims, defenses and issues relevant to this case.

Initial Disclosures

Please see enclosed a PDF of World Gym's initial disclosures. A copy is being sent via US Mail. Please advise as to when we can expect Mr. Waksmundzki's initial disclosures. Thank you.

Best regards,

Elliot B. Gipson

Fayer Gipson LLP

2029 Century Park East | Suite 3535 | Los Angeles CA 90067 | Tel 310.557.3558 | Dir 310.557.9750 | Fax 310.557.3589

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Elliot

From: patentmal@aol.com [<mailto:patentmal@aol.com>]

Sent: Thursday, September 22, 2011 10:18 AM

To: Elliot Gipson

Subject: URGENT ! Your file no. 4023.2.7 Opposition No. 91200225 Our docket: LAC807

Dear Mr. Gibson,

Please find attached our letter of September 22, 2011 in the above-referenced case.
We would appreciate your reply to our letter today, on September 22, 2011.
You may also contact us by phone at 908-526-6100.

Very truly yours,

Horst M. Kasper, Esq.
13 Forest Drive
Warren, NJ 07059

tel. 908-526-6100
fax 908-526-6977

EXHIBIT 6

Horst M. Kasper, Ph.D.

Attorney at Law
Patents-Trademarks-Copyrights

Dr. rer. nat. Horst M. Kasper, J.D.

13 Forest Drive
Warren, New Jersey 07059
Tel: (908) 526 6100
(908) 526 1717
Fax: (908) 526 6977
e-mail: patentmal@aol.com

ELLIOT B. GIPSON
FAYER GIPSON LLP
2029 Century Park East STE 3535
Los Angeles, CA 90067

Warren, October 28, 2011

Your File No.	4023.2.7	Our Docket:	LAC807M3
Mark:	WORLD IXI IXI and Design	Filing Date:	February 19, 2009
Serial No.	79/071,980		
Applicant:	Jacek Waksmundzki		
Opposition No.	91200225		

Dear Mr. Gibson,

Thank you for your e-mail of October 25, 2011 confirming our telephone conference on October 25, 2011. I do not believe that the applicant will be willing to take a deposition in the United States. I have not yet heard from my client so we cannot go over the Rule 26(f). I will contact you again once I have known our client's position regarding the above-referenced case.

Very truly yours,



Horst M. Kasper, Esq.

am

EXHIBIT 7

FAYER GIPSON LLP
2029 CENTURY PARK EAST, SUITE 3535
LOS ANGELES, CALIFORNIA 90067-6002
TEL: (310) 557-3558
FAX: (310) 557-3589
EGIPSON@FAYERGIPSON.COM

October 28, 2011

VIA MAIL AND EMAIL

Horst M. Kasper
Kasper and Laughlin
13 Forest Drive
Warren, NJ 07059
patentmal@aol.com

**Re: WORLD IXI IXI: TRADEMARK APPLICATION NO. 79071980;
OPPOSITION NO. 91200225**

Dear Mr. Kasper:

This letter is being sent in response to your letter dated October 28, 2011 and follows up the telephone call I had with you on October 25. Our correspondence indicates that you have been unable to reach your client for the last five (5) months. If you have been able to get in touch with your client regarding this matter within the last five (5) months, please so advise.

Although I sympathize with your plight, World Gym International IP, LLC ("World Gym") is entitled to move this proceeding forward. Contrary to your letter's assertion, there is no need for you to speak to your client prior to the Rule 26(f) conference, which after all, relates to discovery planning which is traditionally a matter handled by attorneys. To the extent we may be unable to come to an agreement regarding certain issues, for instance, such as your client's availability to be deposed in the United States, that should not prevent the parties from having the Rule 26(f) conference in good faith. Please advise what your availability is next week for a Rule 26(f) conference so that we may move this proceeding forward with all due haste.

As you are aware, World Gym has made Mr. Waksmundzki's counsel aware of World Gym's intent to oppose Mr. Waksmundzki's application for the WORLD [X][X] mark on May 20, 2011. It is now more than five (5) months later. There has been ample time to get instruction from your client. To the extent your client is choosing not to respond, this indicates an intent to abandon his application. Therefore, should you refuse to discuss the matters involved in a Rule 26(f) conference based upon your inability to contact your client (or for any other reason), World Gym must reserve the right to move for sanctions, up to and including terminating sanctions in this matter.

As a formal matter, nothing in this letter shall constitute a waiver of any of World Gym's rights, claims, defenses or privileges, all of which are explicitly reserved. Thank you.

Very truly yours,


Elliot B. Gipson

EXHIBIT 8

FAYER GIPSON LLP
2029 CENTURY PARK EAST, SUITE 3535
LOS ANGELES, CALIFORNIA 90067-6002
TEL: (310) 557-3558
FAX: (310) 557-3589
EGIPSON@FAYERGIPSON.COM

November 7, 2011

VIA MAIL, EMAIL AND FACSIMILE

Horst M. Kasper
Kasper and Laughlin
13 Forest Drive
Warren, NJ 07059
patentmal@aol.com
(908) 526-6977

**Re: WORLD IXIIXI: TRADEMARK APP. NO. 79071980;
OPPOSITION NO. 91200225**

Dear Mr. Kasper:

This letter is being sent to follow up my letter dated October 28, 2011. You did not contact me last week regarding your availability or willingness to participate in a discovery conference. At the discovery conference, we need to discuss:

- The nature of and basis of the respective claims and defenses;
- The possibility of settling the case or at least narrowing the scope of claims or defenses; and
- Arrangements relating to disclosures, discovery, and introduction of evidence at trial.

For the reasons stated in my previous letter, I do not anticipate a discovery conference taking a long time. However, as you have refused to discuss the matters involved in a discovery conference, please be advised that this letter serves as World Gym's notice that it intends to move for terminating sanctions if you are not willing or able to participate in a discovery conference immediately. Please call or email me immediately if you are willing to participate in a discovery conference so that this motion is not necessary.

Per my prior letter, I sympathize with your plight as presumably, you have been unable to reach your client. However, World Gym needs to move this case along and is entitled to prosecute the case with all due haste. I will continue to address all discovery and motion related correspondence and documents in this matter to

November 7, 2011

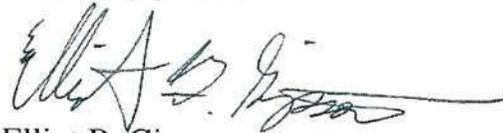
Mr. Kasper

Page 2

you unless and until you are no longer counsel of record in this case. If you are withdrawing as counsel, please inform me immediately and forward this letter to Mr. Waksmundzki or his new counsel and kindly send me the appropriate contact information.

As a formal matter, nothing in this letter shall constitute a waiver of any of World Gym's rights, claims, defenses or privileges, all of which are explicitly reserved.
Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Elliot B. Gipson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Elliot B. Gipson