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

Proceeding	91200327
Party	Defendant Victor Suarez
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Date	06/11/2014
Attachments	Applicant's Motion to Dismiss for Failure to Prove Case.pdf(15275 bytes)

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

In the Matter of Application Serial No. 77/886,135

James Murta, Opposer, v. Victor Suarez. Applicant.	Opposition No. 91/200,327 Interlocutory Attorney: Elizabeth J. Winter APPLICANT’S MOTION FOR JUDGMENT FOR OPPOSER’S FAILURE TO PROSECUTE OR PROVE CASE PURSUANT TO 37 C.F.R. § 2.132(a)
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**APPLICANT’S MOTION FOR JUDGMENT FOR OPPOSER’S FAILURE TO
PROSECUTE OR PROVE CASE PURSUANT TO 37 C.F.R. § 2.132(a)**

Pursuant to 37 C.F.R. Section 2.132(a), Applicant Victor Suarez (“Applicant”) moves to dismiss this opposition proceeding because Opposer James Murta (“Opposer”) has failed to prosecute his case.

I. RELEVANT FACTS

Applicant Victor Suarez is the owner of U.S. Application Serial No. 77/886,135 for the mark DERBY OF SAN FRANCISCO (and Design). On June 16, 2011, Opposer James Murta (“Opposer”) opposed Application No. 77/886,135.

Under the most recent Board order dated January 27, 2014, Opposer’s thirty-day trial period opened on April 16, 2014 and expired on May 16, 2014. To Applicant’s knowledge, Opposer has not taken any testimony or offered any evidence, either during or after his trial period. Applicant has never received: (1) any notices of deposition to be taken by Opposer based on oral testimony or on written questions, (2) copies of any deposition transcripts from

Opposer, and/or (3) proof of any evidence filed by Opposer during its testimony period. Indeed, according to the Trademark Trial and Appeal Board's online database, no such evidence has been filed.

In addition, Opposer's pretrial disclosures were due on April 1, 2014, yet Opposer has not filed any of these required disclosures. Finally, Opposer failed to respond to any of Applicant's discovery requests that were timely served on Opposer on March 17, 2014.

II. ARGUMENTS

A. Judgment for Applicant is Proper Because Opposer Has Failed to Take Testimony or Offer Any Evidence in this Proceeding.

A Motion for Judgment for Failure to Prove under 37 C.F.R. § 2.132(a) is proper when the plaintiff's testimony period has passed and the plaintiff has not taken any testimony or offered any other evidence. 37 C.F.R. § 2.132(a); TBMB § 534.02. The purpose of such a motion is to save the defendant the expense and delay of continuing with the trial in those cases where plaintiff has failed to offer any evidence during its testimony period. *Otter Products LLC v. BaseOneLabs LLC*, 105 USPQ2d 1252 (TTAB 2012); *Atlanta Fulton County Zoo Inc. v. De Palma*, 45 USPQ2d 1858 (TTAB 1998) (motion to reopen discovery and testimony periods denied; motion to dismiss granted); *Procyon Pharmaceuticals Inc. v. Procyon Biopharma Inc.*, 61 USPQ2d 1542 (TTAB 2001) (motion to extend the testimony period denied; motion to dismiss granted); *Litton Business Systems, Inc. v. J. G. Furniture Co. Inc.*, 190 USPQ 428 (TTAB 1976); TBMB § 534.02.

Here, it is undisputed that Opposer has not taken any testimony or offered any evidence during his testimony period. As such, his opposition should be dismissed with prejudice for failure to prosecute.

III. CONCLUSION

For the reasons set forth above, Applicant respectfully requests that the Board grant his Motion to Dismiss for Opposer's Failure to Prosecute or Prove Case.

Respectfully submitted,

Date: June 11, 2014

By: /Marina A. Lewis/
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CERTIFICATE OF SERVICE

I certify that on June 11, 2014, a true copy of the foregoing

**APPLICANT'S MOTION FOR JUDGMENT FOR
OPPOSER'S FAILURE TO PROSECUTE OR PROVE CASE
PURSUANT TO 37 C.F.R. § 2.132(a)**

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