

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

nmt/gcp

Mailed: August 15, 2012

Opposition No. 91201517

Excelled Sheepskin &
Leather Coat Corp.

v.

Rogue Design, LLC

**George C. Pologeorgis,
Interlocutory Attorney:**

On November 8, 2011, applicant filed a proposed amendment to its application Serial Nos. 85058446 and 85058472.

By its proposed amendment, applicant seeks to change the identification of goods in each application by deleting, in its entirety, the goods identified in International Class 25.¹

In an opposition to an application having multiple classes, if the applicant files a request to amend the application to delete an opposed class, the request for amendment is, in effect, an abandonment of the application with respect to that class, and is governed by Trademark Rule

¹The identification of goods in International Classes 14 and 20 recited in both involved applications remains unchanged.

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2.135. See TBMP §602.01. Trademark Rule 2.135 provides as follows:

After the commencement of an opposition, concurrent use, or interference proceeding, if the applicant files a written abandonment of the application or of the mark without the written consent of every adverse party to the proceeding, judgment shall be entered against the applicant. The written consent of an adverse party may be signed by the adverse party or by the adverse party's attorney or other authorized representative.

In this case opposer's written consent to the abandonment of the International Class 25 goods is not of record.

In view thereof, applicant is allowed until **THIRTY DAYS** from the mailing date set forth in the caption of this order to submit opposer's written consent to the abandonment of the involved applications with regard to opposed International Class 25, failing which judgment will be entered against applicant with regard to the applications in International Class 25, the opposition will be sustained in International Class 25, and registration to applicant will be refused in International Class 25 only.

The Board further notes that, on May 31, 2012, applicant filed another proposed amendment but only in regard to its application Serial No. 85058446, with opposer's consent.

By the proposed amendment applicant seeks to change the identification of services in Class 42 of its application

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Serial No. 85058446 **from** "Industrial design services for others" **to** "Industrial design services for others, excluding industrial design services related to clothing or footwear."

Inasmuch as the amendment is clearly limiting in nature as required by Trademark Rule 2.71(a), and because opposer consents thereto, it is approved and entered. See Trademark Rule 2.133(a).

If this resolves the dispute herein, opposer is allowed until thirty days from the mailing date of this order to file a withdrawal of the opposition, failing which the opposition will go forward on application Serial No. 85058446 as amended. See Trademark Rule 2.106(c). As noted above, applicant is also allowed the same thirty days in which to submit opposer's written consent to its deletion of the International Class 25 goods in each of its involved applications, failing which judgment will be entered against applicant with regard to the applications in International Class 25, the opposition will be sustained with respect to International Class 25, and registration to applicant will be refused in International Class 25 only.

As a final matter, the Board notes applicant's answer in this case was due on October 17, 2011. Inasmuch as applicant did not file its answer with the Board by the set deadline, opposer filed a motion for default judgment on November 2,

2011. Applicant eventually filed its answer with the Board on November 4, 2011.² The Board notes that applicant's answer includes a certificate of service stating that the answer was timely served upon opposer on October 17, 2011.

Whether default judgment should be entered against a party is determined in accordance with Fed. R. Civ. P. 55(c), which reads in pertinent part: "for good cause shown the court may set aside an entry of default." As a general rule, good cause to set aside a defendant's default will be found where the defendant's delay has not been willful or in bad faith, when prejudice to the plaintiff is lacking, and where defendant has a meritorious defense. *See Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556 (TTAB 1991).

In this case, the Board finds that opposer is not prejudiced by applicant's approximate 2 ½ week late filing, especially inasmuch as opposer was timely served with applicant's answer and, by filing an answer which denies the fundamental allegations in the notice of opposition, applicant has asserted a meritorious defense to the notice of opposition. Moreover, while applicant has not provided an explanation as to why it filed its answer late, there is

²Applicant's answer does not include a certificate of mailing. Accordingly, applicant's answer is deemed filed the date upon which it was actually received by the Office, i.e., November 4, 2011. *See* Trademark Rule 2.197.

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nothing in the record which indicates that the reasons for applicant's delay were willful or in bad faith.

In view of the foregoing, opposer's motion for default is denied, applicant's default is hereby set aside and applicant's answer to the notice of opposition is noted and accepted.

Notwithstanding the foregoing, proceedings herein are suspended pending a response to this order.