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

Proceeding	91204124
Party	Defendant Robert Campbell
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application Serial Number: 85/396,136
Mark: PLANT HERBAL TREASURES
Filed: August 12, 2011
Published: January 31, 2012

THRESHOLD ENTERPRISES, Ltd., Opposer v. ROBERT CAMPBELL, An Individual, Applicant.	Opposition No. 91204124
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Commissioner of Trademarks
PO Box 1451
Alexandria, VA. 22313-1451

**APPLICANT'S OPPOSITION TO OPPOSER'S REPLY IN SUPPORT OF ITS MOTION FOR
AN EXTENSION OF TIME IN WHICH TO RESPOND TO APPLICANT'S MOTION FOR
SUMMARY JUDGMENT**

INTRODUCTION

In Opposer's Reply in Support of its Motion for An Extension of Time in which to respond to Applicant's motion for summary judgment, Opposer argues that Applicant's arguments are unpersuasive and disingenuous. Applicant repeats that Opposer has not demonstrated good cause for its request for an extension in which to file a response brief, and has a history intentionally delaying this proceeding to the detriment of Applicant causing substantial prejudice.

ARGUMENT

It is clear from applicant's response to Opposer's motion, that indeed Opposer has a history of acting in bad faith when a) Opposer has previously acquired consent no less than 5 (five) times for settlement, without ever making a single attempt to settle this matter, and (b) by again attempting to delay these proceedings under the guise of good cause, when there is non.

A. PRESS OF OTHER LITIGATION

Opposer's counsel admits that although he was aware of all of his pending deadlines, he delayed requesting an extension from Applicant in hopes that he could meet the original deadline and requested an extension only when it became clear that he could not. *See* Opposer Reply ("Opp. Reply") at 2. Applicant points out that Opposer has a history of requesting such extensions just prior to a deadline. If Opposer had such other pressing deadlines, it would be reasonable to expect that Opposer would notify Applicant of such a possibility early on. Instead Opposer waited just before the commencement of the holiday season, nineteen (19) days after applicant filed his motion for summary judgment, in an attempt to catch Applicant of guard, and essentially black mail Applicant into consenting to yet another extension due to Opposer's inability to manage his pending deadlines, and in an effort to further delay the proceedings, causing substantial prejudice, and financial hardship upon Applicant.

In addition, Opposer's counsel argues that it does not have time to meet the deadline to respond to Applicant's motion for summary judgment, but yet Opposer's counsel found the time to file his motion for extension of time without consent, and his reply brief to Applicant's opposition motion. Clearly if Opposer's counsel was available and had the time to draft his motion and reply brief, he could have just as easily utilized this time to respond to Applicant's motion for summary judgment.

i. APPLICANT'S PRIOR CONSENT TO FIVE (5) PREVIOUS EXTENSIONS

Applicant does not dispute affording Opposer with consent to five (5) previous extensions for settlement. Applicant consented to those extensions because Opposer deceived Applicant into believing that Opposer wanted to come to an amicable resolution. But Opposer never made a single attempt to settle this matter. No offers were ever made to Applicant, neither were any possible proposals made for Applicant's consideration. *See* Declaration of Kuscha Hatami in Support of Applicant's Opposition to Opposer's Motion for an Extension of time in which to respond to Applicant's Motion for Summary Judgment ("Hatami Decl.") ¶ 8. Opposer has conveniently forgotten that a suspension for settlement is to be utilized as a tool to expedite proceedings before the TTAB, and as an opportunity to come to an amicable resolution. Instead, Opposer has used these five extensions, which equate to 240 days, to delay this proceeding in hopes that Applicant will tire of defending his trademark rights. Opposer is clearly engaging in trademark bullying, and although its business as usual for Opposer, Applicant's business and financial security are in limbo and forced to suffer due to the substantial prejudice Opposer's actions have caused. Specifically, Applicant is not able to fully invest in his trademark, products, and marketing strategy until this proceeding is resolved. *See* Applicant's Opposition to Opposer's Motion for an extension of time in which to respond to Applicant's Motion for Summary Judgment (App. Opp.) at 9. The record shows that for nearly 2 years Opposer has held Applicant's business and trademark registration hostage, which in itself, is evidence of bad faith on Opposer's part.

ii. OPPOSER'S LAW FIRM V. APPLICANT'S LAW FIRM

Opposer's counsel asserts that his pending deadlines and matters (which magically appeared) are so important, that complying with the board's schedule is secondary, and not necessary. Although Opposer's counsel may have pending matters and deadlines to meet, so do counsel for Applicant. When Applicant's attorney, with his limited resources and manpower, is able to meet all of his deadlines, it puzzles Applicant that Opposer's counsel, with his voluminous

resources and manpower has difficulty to meet the same deadlines. The request for delay here is not an issue of workload, but rather an issue of priorities. It is obvious that this matter is not a priority for Opposer's counsel, nor does Opposer's counsel respect the rules of the board, or take its deadlines seriously. The actions of Opposer and its respective counsel, throughout this proceeding, clearly demonstrates that Opposer and its counsel view this proceeding as a nuisance, and the board's schedule as a formality not to be taken seriously.

B. OUTSTANDING DISCOVERY REQUESTS REGARDING TO ABANDONED MARKS NOT RELATED TO THIS PROCEEDING

As is evident by the record, Applicant abandoned and ceased using the mark PLANETARY HERB TREASURES when Opposer requested that he do so, and also abandoned the mark PLANT HERBALS upon the USPTO refusing registration due to its descriptive nature. App. Opp. at 6.

Opposer now argues that by virtue of once owning an abandoned mark, which in Opposer's opinion was similar to Opposer's marks, that any subsequent trademark(s) that Applicant claims rights to automatically is likely to cause confusion and establishes intent to deceive the public. This assertion is ludicrous, especially in light of the fact that Applicant has complied with Opposer's demands. If anything, it establishes that Applicant is aware of Opposer and its respective marks, and in order to avoid any new disputes with Opposer, Applicant is vigilant about claiming rights to marks that do not cause confusion with marks owned by Opposer. In addition, PLANETARY HERB TREASURES was a matter that had been resolved between the respective parties, and Applicant does not see the point of continuously addressing an issue that the parties resolved years ago.

Opposer continuously asserts that Applicant provided only partial responses to Opposer's second set for Interrogatories and requests for production. The records shows that Applicant indeed made complete responses to Opposer's second sets, that they are in regards to two irrelevant abandoned trademarks, and that the requisite intent, if any, Applicant may have had when choosing the two abandoned marks, does not flow to Applicant's current at issue mark. *See* App. Opp. Exhibit 11.

Furthermore, since Opposer had previously addressed the issue of PLANETARY HERB TREASURES with Applicant in the form of a cease and desist letter, and was likely aware of applicant's HERB TREASURES mark, it puzzles Applicant why Opposer waited this far into the proceeding to suddenly request additional discovery on those two abandoned marks. Surely, Opposer could have addressed any pending concerns it had in reference to the abandoned marks at the time it made its first set of discovery requests. Especially in the light of fact that Opposer feels that Applicant's intent when choosing those marks bears such importance to Applicant's intent when choosing his current at issue mark.

Opposer's actions clearly amount to harassment

C. COUNSEL'S UNAVAILABILITY DUE TO TRAVEL

Counsel asserts that he should not be punished for attempting to meet Board-established deadlines and requesting an extension only when it becomes clear that she or he cannot do so.

This argument is unpersuasive in light of the fact that Opposer has a history of requesting last minute deadlines, and by Opposer's counsel's own admission, he was aware that he would be out of the country from December 24, 2013, to January 4, 2014. Although Applicant is sensitive to medical emergencies and travel plans, Opposer not once contacted Applicant to inform him of either the medical emergency nor his pre-existing travel plans. Hatami Decl. ¶ 4. With all of the pending legal deadlines that Opposer's counsel claims to have, the emergency medical travel, and pre-existing travel plans, it baffles Applicant why Opposer waited until just prior to the holidays and his response deadline to inform Applicant that he requests an additional two weeks in order to respond to Applicant's motion.

In or around the time of Opposer's family medical emergency, Opposer could reasonably have foreseen that an extension of time may be necessary. As a result, Opposer should and could have informed Applicant that he may request an extension and will keep Applicant informed.

Instead Opposer timed his request to just days before Christmas, in hopes that Applicant will be left with no choice but to consent.

Accordingly, Applicant has tired of Opposer's consistent attempts at improperly delaying this proceeding resulting in substantial prejudice and financial hardship to Applicant.

D. APPLICANT'S CLAIM OF PREJUDICE IS NOT BELIED BY HIS BEHAVIOR

Although all of the evidence leads to the conclusion that Opposer has a history of systematically harassing Applicant by giving Applicant the false hope of settlement, and cause substantial prejudice by improperly delaying this proceeding, Opposer acts innocent and is puzzled.

First, the prior suspensions for settlement in this proceeding were consented to only because Opposer made the requests under the guise of settlement. As discussed above, Opposer never initiated any settlement discussions, never made an offer, nor gave Applicant any options to consider. Hatami Decl. ¶ 5. As a result, Applicant was deceived by Opposer when consenting to the five (5) previous extensions for settlement.

Second, Opposer suggests that Applicant should refrain from motion practice in order to limit his legal fees. Essentially, Opposer argues that Applicant should forfeit his legal rights, and his ability to zealously defend his position in order to save money. What Opposer essentially is proposing is that Applicant should just give up defending his trademark, simply because Opposer will do whatever is in its power to ensure that Applicant will incur thousands of dollars in litigation costs unless he capitulates.

Finally, Applicant's decision to cease use of mark(s), when made aware of possible confusion, demonstrates that Applicant is not one to intentionally cause confusion or deceive the public, rather, that Applicant is one who respects the Intellectual property rights of others.

E. OPPOSER'S COUNSEL HAS TIME TO DRAFT AND FILE TWO MOTIONS, BUT NOT A RESPONSE BRIEF TO APPLICANT'S SUMMARY JUDGMENT MOTION

As discussed above, if Opposer's counsel found the time to file a motion and a response brief, he should have utilized and managed his time better and responded to Applicant's motion for

summary judgment. Instead, Opposer's counsel utilized his common tactic for harassment by choosing to wait until the last moments, during the Christmas holiday season, to request yet a sixth (6th) extension in an attempt to further delay this proceeding. Opposer's counsel, by his own admission, has already delayed this proceeding for 240 days (Opp. Rep. at 15), if Opposer's counsel is allowed to continue this pattern of deception, his improper behavior will not cease until the close of this proceeding to Applicant's detriment and substantial prejudice.

CONCLUSION

Because good cause does not exist, and Opposer's actions amount to improper harassment, unnecessary delay, and the needless increase of cost of litigation, Applicant respectfully requests that Opposer's motion be denied and that Opposer be required to respond to Applicant's motion as set forth by the TBMP 528 and the FRCP.

Dated: 12/30/2013

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CERTIFICATE OF MAILING AND SERVICE

This is to certify that a copy of the foregoing **APPLICANT'S OPPOSITION TO OPPOSER'S
REPLY IN SUPPORT OF ITS MOTION FOR AN EXTENSION OF IME IN WHICH TO
RESPOND TO APPLICANT'S MOTION FOR SUMMARY JUDGMENT** has been served on
counsel for THRESHOLD ENTERPRISES, Ltd., by depositing said copy with the United States
Postal Service as First Class Mail, postage prepaid, in an envelope addressed to:

Jeremy McLaughlin
Arnold & Porter LLP
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And via email to:

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This 30st day of December 2013

/Kuscha Hatami/

Kuscha Hatami