ESTTA Tracking number: **ESTTA558828**
Filing date: **09/11/2013**

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

Proceeding	91209281
Party	Plaintiff Christian Dior Couture, S.A.
Correspondence Address	PHILIP H GOTTFRIED AMSTER ROTHSTEIN & EBENSTEIN LLP 90 PARK AVENUE , 21ST FOOR NEW YORK, NY 10016 UNITED STATES ptodocket@arelaw.com
Submission	Other Motions/Papers
Filer's Name	Philip Gottfried
Filer's e-mail	ptodocket@arelaw.com
Signature	/Philip Gottfried/
Date	09/11/2013
Attachments	Motion and Memo of Law in Support of Opposer's Motion - Christian Dior v. Shenzhen Koradior.pdf(172547 bytes) Declaration of Philip Gottfried in Support of Opposer's Motion - Christian Dior v. Shenzhen Koradior.pdf(425181 bytes)

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

CHRISTIAN DIOR COUTURE, S.A., Opposer, v. SHENZHEN KORADIOR FASHION CO., LTD, Applicant.	Opposition No. 91209281

MOTION AND MEMORANDUM OF LAW IN SUPPORT OF OPPOSER'S MOTION FOR JUDGMENT IN IT'S FAVOR BASED ON APPLICANT'S REPRESENTATION THAT IT WILL NOT DEFEND THE OPPOSITION AND FOR SUSPENSION OF PROCEEDINGS

Opposer Christian Dior Couture, S.A. ("Opposer") brings this Motion pursuant to T.B.M.P. § 527.03. Opposer seeks an Order granting judgment in Opposer's favor in the Opposition and requiring that the Application at issue in this dispute, U.S. Trademark Application Serial No. 79/117,194 ("Applicant's Application"), be denied registration. Opposer brings this Motion based on the representation by counsel for Applicant Shenzhen Koradior Fashion Co., Ltd. ("Applicant") that Applicant will not defend the Opposition.

In the interest of justice, Opposer further moves for an Order that discovery and all other dates be suspended pending the Board's determination of this Motion.

I. FACTS

Applicant has failed to serve Initial Disclosures, despite the fact that same were due July 29, 2013. Gottfried Decl.,[1] Par. 5. Applicant has also failed to serve responses to Opposer's Interrogatories and Document Requests ("Opposer's Discovery Requests"), despite the fact that same were due July 31, 2013. *Id.* at Pars. 3 and 4 and Exh. 1.

[1] "Gottfried Decl." refers to the Declaration of Philip H. Gottfried, submitted herewith.

On August 5, 2013, Philip H. Gottfried, counsel for Opposer, spoke with counsel for Applicant, Joseph J. Villapol by telephone. *Id.* at Par. 6. During the call, Mr. Villapol advised that he had been given instructions to take no further action in this matter, and explained that this is why Applicant had not served its Initial Disclosures or responded to Opposer's Discovery Requests. *Id.*

Consistent with Applicant's counsel's representation, Applicant has still not served its Initial Disclosures or responded to Opposer's Discovery Requests. *Id.* at Par. 7.

In light of the foregoing, Opposer respectfully requests that judgment should be entered against Applicant in this proceeding and that Applicant be denied registration of its mark.

II. LEGAL ANALYSIS

The Trademark Trial and Appeal Board Practice and Procedure Manual provides, in relevant part, that:

> When a party to an inter-partes proceeding before the Board advises an adverse party that it will not take any further action in the case, the adverse party may file a motion asserting this fact and request entry of judgment in its favor. If, as is usually the case, the motion is uncontested, the Board normally will grant it.

T.B.M.P. § 527.03.

In this case, as indicated above, Applicant has expressly stated that it does not intend to take any further action in this case. Consistent with this statement, Applicant has not served Initial Disclosures or responded to Opposer's discovery, despite the fact that they were due over a month ago.

In light of the foregoing, it is respectfully submitted that judgment should be entered in Opposer's favor and that Applicant's Application should be denied registration.

Although Opposer believes that judgment should be entered in its favor, in the interests of justice, and in order to preserve its rights, Opposer respectfully also moves that, if the Motion

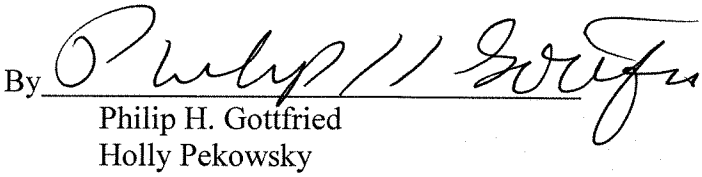
is not granted, discovery and all other dates be extended ninety days from the date of the Board's Order in order to allow Opposer sufficient time to engage in discovery.

III. CONCLUSION

Based on the foregoing, it is respectfully requested that the Board issue an Order entering judgment in Opposer's favor and denying Applicant's Application. It is further respectfully requested that the Board stay all discovery and all other dates pending a resolution of this Motion and, if the Motion is denied, extend all dates by ninety (90) days from the date of the Board's Order.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP
Attorneys for Opposer
90 Park Avenue
New York, NY 10016
Tel: (212) 336-8000
Fax: (212) 336-8001

By 
Philip H. Gottfried
Holly Pekowsky

Dated: September 10, 2013
New York, New York

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is one of the attorneys for Opposer Christian Dior Couture, S.A.. in the captioned action, and that on the date which appears below she served a true and accurate copy of the foregoing MOTION AND MEMORANDUM OF LAW IN SUPPORT OF OPPOSER'S MOTION FOR JUDGMENT IN IT'S FAVOR BASED ON APPLICANT'S REPRESENTATION THAT IT WILL NOT DEFEND THE OPPOSITION AND FOR SUSPENSION OF PROCEEDINGS, by causing a copy thereof to be delivered to Applicant Shenzhen Koradior Fashion Co., Ltd by FedEx, postage pre-paid, to its attorneys as follows:

Joseph J. Villapol, Esq.
Ladas & Parry LLP
1040 Avenue Of The Americas
New York, NY 10018-3738

Holly Pekowsky

Dated: September 11, 2013
New York, New York

553328.1

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

CHRISTIAN DIOR COUTURE, S.A., Opposer, v. SHENZHEN KORADIOR FASHION CO., LTD, Applicant.	Opposition No. 91209281

DECLARATION OF PHILIP H. GOTTFRIED IN SUPPORT OF OPPOSER'S MOTION FOR JUDGMENT IN IT'S FAVOR BASED ON APPLICANT'S REPRESENTATION THAT IT WILL NOT DEFEND THE OPPOSITION AND FOR SUSPENSION OF PROCEEDINGS

Philip H. Gottfried declares:

1. I am a partner at the law firm of Amster, Rothstein & Ebenstein, LLP, attorneys for Opposer Christian Dior Couture, S.A. ("Opposer") in the above-referenced matter.

2. I make this Declaration in support of Opposer's Motion For Judgment In It's Favor Based On Applicant's Representation That It Will Not Defend The Opposition and For Suspension of Proceedings.

3. On June 26, 2013, Opposer, through the undersigned counsel, served Opposer's First Set of Interrogatories and Document Requests to Applicant ("Opposer's Discovery Requests") on Applicant Shenzhen Koradior Fashion Co., Ltd ("Applicant"). A true and correct copy of the Discovery Requests are annexed hereto as Exhibit 1.

4. Although Applicant's responses to Opposer's Discovery Requests were due on July 31, 2013, none were received by our office.

5. Although Applicant's Initial Disclosures were due July 29, 2013, none were received by our office.

6. On August 5, 2013, I spoke with counsel for Applicant, Joseph J. Villapol, by telephone. During the call, Mr. Villapol advised me that he had been given instructions to take no further action in this matter, and that was why Applicant had not served its Initial Disclosures or responded to Opposer's Discovery Requests.

7. Consistent with Applicant's counsel's representation, Applicant has still not served its Initial Disclosures or responded to Opposer's Discovery Requests.

8. Pursuant to 28 U.S.C. § 1746, I declare, under penalty of perjury, that all of the foregoing is true and correct.

Philip H. Gottfried

Dated: September 10, 2013
New York, New York

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is one of the attorneys for Opposer Christian Dior Couture, S.A. in the captioned action, and that on the date which appears below she served a true and accurate copy of the foregoing DECLARATION OF PHILIP H. GOTTFRIED IN SUPPORT OF OPPOSER'S MOTION FOR JUDGMENT IN IT'S FAVOR BASED ON APPLICANT'S REPRESENTATION THAT IT WILL NOT DEFEND THE OPPOSITION AND FOR SUSPENSION OF PROCEEDINGS, by causing a copy thereof to be delivered to Applicant Shenzhen Koradior Fashion Co., Ltd by FedEx, postage pre-paid, to its attorneys as follows:

Joseph J. Villapol, Esq.
Ladas & Parry LLP
1040 Avenue Of The Americas
New York, NY 10018-3738

Holly Pekowsky

Dated: September 11, 2013
New York, New York

553347.1

EXHIBIT 1

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

CHRISTIAN DIOR COUTURE, S.A., Applicant, v. SHENZHEN KORADIOR FASHION CO., LTD, Applicant.	Opposition No. 91209281

OPPOSER'S FIRST SET OF INTERROGATORIES
AND DOCUMENT REQUESTS TO APPLICANT

Pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure, and Rule 2.120 of the Patent and Trademark Office Rules of Practice, Applicant Shenzhen Koradior Fashion Co., Ltd is hereby required to answer the following interrogatories fully and separately under oath, and to produce the documents requested herein for inspection and copying by Opposer Christian Dior Couture, S.A., at the offices of Opposer's counsel, Amster, Rothstein & Ebenstein LLP, Att: Holly Pekowsky, Esq., 90 Park Avenue, New York, New York 10016, within thirty-five (35) days of service hereof.

DEFINITIONS AND INSTRUCTIONS

1. As used herein, the term "Applicant" refers to Applicant Shenzhen Koradior Fashion Co., Ltd., and any related persons or entities, predecessors-in-interest and successors-in-interest and any parent, subsidiary, affiliate and other related person or entities.

2. As used herein, the term "Opposer" refers to Christian Dior Couture, S.A. its owners, members, stockholders, officers, directors, any predecessors-in-interest of The

Dior Trademarks, and any parent, subsidiary, affiliate and other related person or entities.

3. As used herein, the term "The Dior Trademarks" shall have the meaning ascribed to them in the Notice of Opposition.

4. As used herein, the term "Applicant's Mark" shall mean KORADIOR, either alone or in combination with words, symbols, designs or logos, as a trademark, trade name, service mark or otherwise.

5. As used herein, the term "Applicant's Application" shall mean U.S. Trademark Application Serial No. 79/117,194.

6. These interrogatories and document requests shall be deemed to seek answers, responses and documents as of the date hereof and shall be deemed to be continuing in nature as to knowledge, information and documents obtained or acquired by Applicant up to and including the time of trial in this matter.

7. Unless indicated otherwise, the scope of these interrogatories and document requests is worldwide.

INTERROGATORIES

1. With respect to each product or service offered under Applicant's Mark, state:

   a. the date of first use;

   b. the date of first use in commerce; and

   c. whether such use has been continuous without interruption to the present, and, if not, the date(s) of non-use.

2. State whether Applicant is aware of any instances of actual confusion between Applicant's Mark and/or Applicant on the one hand, and Opposer and/or The Dior Trademarks on the other hand.

3. Identify the individual(s) at Applicant who chose Applicant's Mark.

4. Identify the date when Applicant's Mark was chosen by Applicant.

5. Identify the individual(s) at Applicant who made the decision to make the statement below during prosecution of Applicant's Application:

> The trademark consists of an invented and stylized Latin word "Koradior"; the wording "Koradior" is the trade name of the applicant and has no significance in the relevant trade or industry or as applied to the goods listed in the application, not a term of art, no geographical significance, nor any meaning in any foreign language.

6. Identify the individual(s) at Applicant who decided to file Applicant's Application.

DOCUMENT REQUESTS

1. All documents concerning Opposer and/or The Dior Trademarks.

2. All documents concerning any investigation conducted by or on behalf of Applicant regarding Opposer and/or The Dior Trademarks.

3. All documents concerning any surveys, market research or market studies undertaken by or on behalf of Applicant in connection with Applicant's Mark.

4. All documents constituting or relating to the development and/or creation of any goods or services covered by Applicant's Mark, including hang tags, labels, packaging, promotional material, *etc.*

5. For each product or service offered or sold under Applicant's Mark, documents sufficient to show the dates each of these products and services were first offered for sale and

sold and/or provided, and if applicable, the dates each of these products and services were discontinued.

6. Documents sufficient to identify all the methods by which products and services offered under Applicant's Mark have been and are intended to be advertised and promoted (*e.g.*, in newspaper advertisements, web sites, television commercials, *etc.*).

7. All documents which refer to the actual and intended marketing, advertising and promotion of Applicant's products and services offered for sale or sold or otherwise provided under Applicant's Mark.

8. All third party articles (including news and entertainment articles) concerning Applicant's use of or intended use of Applicant's Mark.

9. Documents sufficient to identify all of Applicant's customers for goods and services sold and/or provided under Applicant's Mark.

10. Specimens of labels and hang tags and packaging for Applicant's products and services bearing or sold or provided under Applicant's Mark.

11. Documents sufficient to describe the channels of trade through which products and services offered under Applicant's Mark are, were and are intended to be offered.

12. All documents concerning investigations such as trademark, service mark, trade name, or corporate name searches conducted by or at the direction of Applicant relating to the use and/or registration of Applicant's Mark.

13. All documents concerning any opinion or advice received by Applicant, or any person(s) employed by or affiliated with Applicant, concerning whether or not a trademark or service mark conflict might arise from the adoption and use of Applicant's Mark.

14. All documents which show or relate to Applicant's conception, creation and/or adoption of Applicant's Mark.

15. All documents which refer or relate to a likelihood of confusion between The Dior Trademarks and/or Opposer on the one hand, and Applicant's Mark and/or Applicant on the other hand.

16. All documents which refer or relate to instances of actual confusion between The Dior Trademarks and/or Opposer on the one hand, and Applicant's Mark and/or Applicant on the other hand, including, without limitation, any misdirected mail, telephone calls, orders, inquiries or complaints that Applicant received that were intended for Opposer or which referenced The Dior Trademarks.

17. All documents which reflect when Applicant's knowledge of The Dior Trademarks began.

18. All documents which refer or relate to any investigations, shopping, market study, survey or poll (including pretests conducted by Applicant or any person or persons acting for or on behalf of Applicant) concerning any matter relating to the within Opposition, including but not limited to: (a) Applicant's use or intended use of Applicant's Mark; and (b) the likelihood of confusion between The Dior Trademarks and Applicant's Mark.

19. All agreements between Applicant and any other person, whereby either Applicant or said person was granted the right to or was prohibited from manufacturing, advertising, distributing, offering for sale or selling goods or services under Applicant's Mark, including, without limitation, manufacturing agreements, license agreements, settlement agreements, consent agreements and coexistence agreements.

20. All documents which refer to or relate to negotiations between Applicant and any person with respect to the agreements produced in response to the previous Request.

21. Any agreements between Applicant and any other person which in any way involve or affect Applicant's ownership or title to Applicant's Mark.

22. Documents sufficient to identify the monetary expenditures on advertising and promotion for each product or service sold, offered or provided by Applicant under Applicant's Marks in the United States on an annual basis since the date the Mark was first used.

23. All documents relating to correspondence or communications with third parties concerning any of the issues relevant to the instant proceeding in the United States, including, without limitation, the strength of Applicant's Mark and the likelihood of confusion between Applicant's Mark and The Dior Trademarks.

24. Documents sufficient to identify Applicant's annual gross and net sales by unit and dollar amount for each product and each service sold/provided under Applicant's Mark in the United States since such use began.

25. All federal trademark applications or registrations Applicant intends on making of record in this proceeding.

26. All business proposals, business plans, marketing plans, advertising plans, and advertising campaigns concerning products or services sold or provided or intended to be sold or provided under Applicant's Mark.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP
Attorneys for Opposer
90 Park Avenue
New York, New York 10016
(212) 336-8000

Dated: New York, New York
June 26, 2013

By: Holly Pekowsky
Philip H. Gottfried
Holly Pekowsky

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is one of the attorneys for Opposer in the above-captioned Opposition proceeding and that on the date which appears below, she caused a copy of the foregoing to be served on Applicant Shenzhen Koradior Fashion Co., Ltd by FedEx, postage pre-paid, as follows:

Joseph J. Villapol, Esq.
Ladas & Parry LLP
1040 Avenue Of The Americas
New York, NY 10018-3738

Holly Pekowsky

Dated: New York, New York
June 26, 2013

546872.1