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

Proceeding	91211882
Party	Plaintiff Knowledgent Group Inc.
Correspondence Address	ELYSE A MARCUS SILLS CUMMIS & GROSS PC 30 ROCKEFELLER PLAZA , 29TH FLOOR NEW YORK, NY 10112 UNITED STATES pto@sillscummis.com, emarcus@sillscummis.com, elon-gobardi@sillscummis.com, fwaldbaum@sillscummis.com
Submission	Other Motions/Papers
Filer's Name	Elyse A Marcus
Filer's e-mail	emarcus@sillscummis.com, fwaldbaum@sillscummis.com, pto@sillscummis.com
Signature	/Elyse A Marcus/
Date	09/08/2014
Attachments	Opposer'sMotionforSanctions.pdf(209679 bytes )

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

	:	Opposition No. 91211882
KNOWLEDGENT GROUP INC.,	:	
	:	
Opposer,	:	
	:	
v.	:	
	:	
GREG SEARLE, DBA,	:	
KNOWLEDGEMENT PTY LTD.	:	
	:	
Applicant,	:	
_____	:	

**OPPOSER’S MOTION FOR SANCTIONS**

Pursuant to Rule 37 of the Federal Rules of Civil Procedure and Rule 2.120(g) of the Trademark Rules of Practice, Opposer, Knowledgent Group Inc. (“Opposer”), hereby moves this Board for sanctions against Applicant, Greg Searle, DBA Knowledgement Pty Ltd. (“Applicant”) and respectfully requests an order entering default judgment against Applicant. Applicant has willfully flouted this Board’s order regarding discovery despite this Board’s warning that sanctions could result from such conduct. Default judgment should be entered against Applicant.

**I. Facts Supporting Entry of Default Judgment**

On May 22, 2014, Opposer filed a Motion to Compel Applicant to serve discovery responses. In connection with its Motion to Compel, Opposer also submitted the declaration of Elyse A. Marcus detailing the numerous attempts made by Opposer to receive the requested

initial disclosures, interrogatory responses and response to document requests. Applicant was consistently unresponsive and uncooperative with responses to these requests.

Applicant did not respond to Opposer's Motion to Compel and on July 24, 2014, the Board granted Opposer's Motion to Compel as conceded. *See* Order at 1. The Board ordered Applicant to respond to Opposer's interrogatories and document requests and to serve its initial disclosures no later than August 21, 2014. Applicant neither responded to Opposer's interrogatories and document requests nor served its initial disclosures. In fact, on August 20, 2014, the day before the responses were due, Applicant's attorney filed a motion to withdraw as the attorney of record and requested that Applicant be given time to either represent itself or find a new attorney. This is the second time that Applicant's attorney has requested withdrawal without providing Opposer with initial disclosures and discovery responses. On August 22, 2014, the Board denied Applicant's counsel's request to withdraw as the attorney of record.

Applicant has not provided Opposer or the Board with any reason for its failure to respond or comply to the July 24, 2014 Order. Opposer submits that Applicant's unresponsiveness indicates that it has no intention of responding to Opposer's discovery requests and interrogatories or to serving its initial disclosures, and that it does not have any intention of otherwise defending this Opposition proceeding. Thus, a sanction of default judgment is entirely appropriate.

## **II. Applicant's Conduct Warrants Default Judgment**

As detailed in its Motion to Compel, Opposer has spent over five months making significant efforts to obtain its requested discovery and initial disclosures, but Applicant has failed to cooperate. Opposer is opposing Applicant's application for KNOWLEDGEMENT on the basis that Opposer is the senior user and that Applicant's mark is confusingly similar to

Opposer's and likely to confuse consumers. (*See* Notice of Opposition filed on August 5, 2013). Despite Opposer's efforts, Applicant has refused to timely respond to fundamental discovery requests concerning these issues and whether the mark is used at all, which of course, bears directly on the issue of whether the mark should be allowed to register. *See American Society of Oral Surgeons v. American College of Oral and Maxillofacial Surgeons*, 201 U.S.P.Q. 531, 533 (TTAB 1979) (information related to marks is relevant and therefore discoverable). Applicant has failed to comply with its obligation to make a good faith effort to satisfy Opposer's reasonable discovery requests. *See* Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 408.01, citing *Panda Travel Inc., v. Resort Option Enterprises, Inc.*, 94 U.S.P.Q.2d 1789, 1791 (TTAB 2009) ("each party has a duty to make good faith effort to satisfy the reasonable and appropriate discovery needs of its adversary."). Failing to respond to proper discovery requests and to serve initial disclosures prejudices Opposer's ability to prosecute this Opposition proceeding.

The Board's Order clearly stated that "[a]pplicant must respond in full and without objection on the merits thereof inasmuch as applicant failed to either timely respond or to object to said discovery. Should applicant fail to comply with this order, opposer's remedy will lie in a motion for entry of sanctions, which sanctions may include judgment pursuant to Trademark Rule 2.120(g)(1)." *See* Order at 2. As a result, the appropriate sanction in this case is the entry of default judgment against Applicant. *MHW Ltd. v. Simex Aussenhandelsgesellschaft Savelsberg KG*, 59 USPQ2d 1477 (TTAB 2000)(repeated failure to comply with orders and unpersuasive reasons for delay resulted in entry of judgment); *Baron Philippe de Rothchild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 USPQ2d 1848, 1854 (TTAB 2000) (pattern of dilatory conduct indicated willful disregard of Board order and resulted in entry of judgment). Applicant has failed to

comply with the Board's Order and has engaged in a pattern of dilatory conduct warranting a sanction of default judgment.

The Board's Order is clear and specific in that Applicant was to respond to Opposer's discovery requests and to serve initial disclosures by a specific date. Order at 2. Applicant has been afforded ample opportunity to provide Opposer with responses to Opposer's document requests and interrogatories and to serve initial disclosures. Applicant's failure to comply with the Board's Order should be regarded as willful, especially since in his request to withdraw as attorney of record, Applicant's counsel included no information as to whether Applicant had complied or intended to comply with the Board's July 24, 2014 Order. Applicant's failure to provide discovery responses and initial disclosures blatantly defies the Board's Order and shows an outright disregard of Applicant's discovery obligations consistent with Rule 26 of the Federal Rules of Civil Procedure. Rule 37 of the Federal Rules of Civil Procedure specifically allows for a sanction of "default judgment against the disobedient party." Fed. R. Civ. P. 37(b)(2)(A)(vi). Registrant's conduct has been clearly disobedient; accordingly, sanctions in the form of default judgment are warranted. *See The Pep Boys Manny, Moe & Jack v. Kent G. Anderson*, 2014 TTAB LEXIS 285 (TTAN 2014) (persistent failure to comply compels the conclusion that Applicant's noncompliance is willful); *Benedict v. Super Bakery, Inc.*, 665 F.3d 1263, 1268 (Fed. Cir. 2011) ("default judgment may be warranted in cases of repeated failure to comply with reasonable orders of the Trademark Board, when it is apparent that a lesser sanction would not be effective.").

### **III. Alternatively, Petitioner Moves for a Suspension of the Proceedings**

If the Board does not grant Opposer's Motion for Sanctions in the form of default judgment, Opposer seeks suspension and further moves the Board to suspend these proceedings

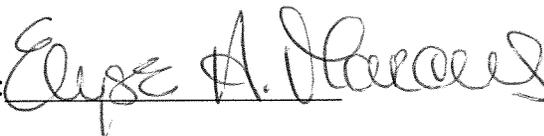
pending the outcome of this potentially dispositive motion. In the event that Opposer's motion is not granted, Opposer requests that the Board reset the trial dates, including the close of discovery for Opposer only, so as not to prejudice Opposer.

**IV. Conclusion**

For all of the foregoing reasons, Opposer respectfully requests that this Board grant Opposer's Motion for Sanctions and enter an Order granting default judgment against Applicant. If the Board finds that default judgment is not warranted, Opposer requests that the Board reset the trial dates, including the close of discovery for Opposer only, so as not to prejudice Opposer.

Respectfully submitted,

SILLS CUMMIS & GROSS P.C.

By: 

Trent Dickey  
Elyse A. Marcus

Dated: September 8<sup>th</sup>, 2014

30 Rockefeller Plaza  
New York, New York 10112  
Tel. 212-643-7000  
Fax 212-643-6500

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing has been served on Applicant by first class mail, postage prepaid:

Darren S. Rimer  
Rimer & Mathewson LLP  
30021 Tomas, Suite 300  
Rancho Santa Margarita, CA 92688

Dated this 8<sup>th</sup> day of September, 2014



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Francine Waldbaum