

ESTTA Tracking number: **ESTTA741780**

Filing date: **04/22/2016**

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

Proceeding	91213584
Party	Plaintiff Jaguar Land Rover Limited
Correspondence Address	DORNE J MCKINNON RYBICKI BROOKS KUSHMAN PC 1000 TOWN CENTER 22ND FLOOR SOUTHFIELD, MI 48075 UNITED STATES gdavis@brookskushman.com, drybicki@brookskushman.com, mfangileri@brookskushman.com, jziegler@brookskushman.com, rcantor@brookskushman.com
Submission	Other Motions/Papers
Filer's Name	Jennifer K. Ziegler
Filer's e-mail	jziegler@brookskushman.com,gdavis@brookskushman.com
Signature	/jennifer ziegler/
Date	04/22/2016
Attachments	Response to Motion to Amend Judgment.pdf(43740 bytes) Exhibit A.pdf(86362 bytes)

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

JAGUAR LAND ROVER LIMITED,)	Opposition No. 91213584
)	
Opposer,)	
)	Serial No. 85867803
v.)	
)	
TOYS TEKK CORPORATION,)	
)	
Applicant.)	

**OPPOSER’S RESPONSE TO
APPLICANT’S MOTION TO AMEND OR MODIFY JUDGMENT**

On March 29, 2016, Applicant Toys Tekk Corporation, through its counsel Shun C. Chen, Esq. (“Mr. Chen”), filed an Express Withdrawal of Application (“Applicant’s Withdrawal”). On April 13, 2016, the Board addressed Applicant’s Withdrawal, entering judgment against Applicant, sustaining the opposition, and refusing registration of Applicant’s mark. On April 18, 2016, Applicant, through its counsel Mr. Chen, filed “Applicant’s Motion to Amend or Modify Judgment” (“Applicant’s Motion”).

While Applicant’s Motion purports to rely on Fed. R. Civ. P. 59(e) and 60, Applicant has failed to prove, or even allege, any of the enumerated grounds for such reliance. Instead, Applicant seems to claim the following “bases” for its Motion: (1) “evidence of Opposer’s fraudulent representation”; and (2) “Applicant’s error in submitting the prior withdrawal.” In what has been an unfortunate pattern throughout this proceeding, Mr. Chen once again makes groundless and inflammatory accusations of fraud against Opposer’s counsel.

The parties entered into a written Agreement, fully executed March 18, 2016, in which they resolved their dispute relating to the Application and the instant opposition. The Agreement was negotiated by counsel for both parties, including Mr. Chen, and signed by or on behalf of Applicant on March 18, 2016. A copy of the Agreement was attached to Applicant's Motion. Paragraph 1 of the Agreement states that "Within five (5) business days of the Effective Date, Toys Tekk shall file a Withdrawal of the Application, with prejudice, with the TTAB, and shall provide written notice to JLR of such action." The Agreement does not say anything about entering consent as part of the record and neither Applicant nor its counsel Mr. Chen ever raised that as an issue during negotiation of the Agreement. Moreover, Paragraph 10 of the Agreement contains an integration clause, clearly stating that the Agreement expresses the entire understanding between the parties.

On March 22, Mr. Chen sent Opposer's undersigned counsel a written request to "Please advise in what format and to whom you wish us to file the withdrawal of the application." Undersigned counsel responded on the very same day by sending an example of a very recent withdrawal, dated March 8, 2016, that had been prepared and filed by an attorney for an applicant in another matter. This email exchange is attached as Exhibit A.

Applicant, through its counsel Mr. Chen, then prepared and filed the Withdrawal. The authorities cited in Applicant's Withdrawal, which had been cited in the example provided to Mr. Chen, specifically TBMP § 602.01 and 37 C.F.R. § 2.68, indicate that Mr. Chen was fully aware of the procedure for withdrawal before the TTAB. Now Applicant and Mr. Chen make the false and inflammatory claim that Opposer's counsel "intentionally provide[d] a sample [withdrawal] to prejudice Applicant." Applicant has not articulated the nature of the prejudice it believes to have suffered.

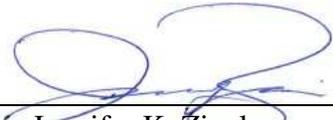
Mr. Chen claims that an assistant adopted the example withdrawal by mistake and that he (Mr. Chen) lacks experience with TTAB procedure, stating “this is [Mr. Chen’s] first-time litigation in front of the Board.” Mr. Chen is hardly new to practice before the PTO and Board. He filed the Application on behalf of Applicant on March 5, 2013, over 3 years ago. This proceeding was instituted November 20, 2013, nearly 2 ½ years ago, and during that time, Mr. Chen has filed counterclaims, a motion to dismiss, and various other papers that would indicate he is quite familiar with procedure before the Board.

Furthermore, TBMP § 114.03 provides that “Practice before the Board constitutes practice before the Office, subjecting any such attorney to the USPTO RULES OF PROFESSIONAL CONDUCT. Attorneys practicing before the Board are encouraged to familiarize themselves with the provisions of Part 11 of 37 CFR.” Additionally, the Board’s November 20, 2013 Order provides that “Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations (“Trademark Rules”). These rules may be viewed at the U.S. Patent and Trademark Office’s trademarks page: <http://www.uspto.gov/trademarks/index.jsp>. The Board’s main webpage (<http://www.uspto.gov/trademarks/process/appeal/index.jsp>) includes information on amendments to the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a web link to the Board’s manual of procedure (the TBMP).” In other words, Mr. Chen was provided with all the tools needed to practice before the Board and was informed of his duty to follow those rules of practice. Moreover, far from providing Mr. Chen with an example that “intentionally prejudiced” Applicant, undersigned counsel provided Mr. Chen with an example that cited the very rules of practice with which he now claims unfamiliarity. Applicant’s request is a shameful

and unprofessional waste of the Board's time and resources and there is simply no basis for the relief sought.

Notwithstanding its various filings and inflammatory allegations, Applicant has failed to provide any justification for its request to amend or modify the Board's judgment. The Board appropriately issued its April 13, 2016 Order and there is no basis for amending or modifying it. Accordingly, Opposer respectfully requests that Applicant's Motion be denied.

Respectfully submitted,

By: 
Jennifer K. Ziegler
Chanille Carswell
Rebecca J. Cantor

Attorneys/Agents for Opposer

Date: April 22, 2016

BROOKS KUSHMAN P.C.
1000 Town Center, 22nd Floor
Southfield, MI 48075
Phone: 248-358-4400
Fax: 248-358-3351

CERTIFICATE OF SERVICE

I certify that I served:

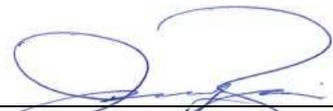
**OPPOSER'S RESPONSE TO
APPLICANT'S MOTION TO AMEND OR MODIFY JUDGMENT**

On April 22, 2016 by First Class Mail to:

Shun C. Chen
LAW OFFICES OF SHUN C. CHEN
4521 Campus Drive # 324
Irvine, CA 92612-2621

Courtesy copy via email to: shunchen@att.net

Correspondent for Applicant

By: 
Jennifer K. Ziegler

Jennifer K. Ziegler

From: Jennifer K. Ziegler
Sent: Tuesday, March 22, 2016 8:33 PM
To: shunchen@att.net
Cc: Rebecca Cantor; Genna Davis
Subject: FW: Settlement Agreement
Attachments: Settlement.Agreement.pdf; ttabvue-91225219-OPP-6.pdf

Shun,

Thank you for the signed Agreement. Here's an example of a recent withdrawal prepared by opposing counsel and filed before the TTAB in another matter.

Best regards,

Jennifer

Jennifer K. Ziegler
Senior Trademark Attorney



1000 Town Center, 22nd Floor | Southfield, MI 48075

Direct: (248) 226-2817 | Main: (248) 358-4400

jziegler@BrooksKushman.com

[Bio](#) | [Website](#)

From: Shun Chen [<mailto:shunchen@att.net>]

Sent: Tuesday, March 22, 2016 6:32 PM

To: Jennifer K. Ziegler

Subject: Settlement Agreement

Our client executed the settlement agreement. Please advise in what format and to whom you wish us to file the withdrawal of the application.

Shun
(949) 689-5439