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

Proceeding	91213869
Party	Defendant Idaho Housing and Finance Association
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Submission	Motion to Dismiss 2.132
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IN THE UNITED STATES PATENT & TRADEMARK OFFICE
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Home Loan Investment Bank, FSB,)	Opposition No.: 91213869
<i>Opposer,</i>)	Application No. 85951771
vs.)	
Idaho Housing and Finance Association,)	
<i>Applicant</i>)	

MOTION TO DISMISS

Applicant Idaho Housing and Finance Association, by and through its attorneys of record, moves to dismiss on the grounds that Plaintiff Home Loan Investment Bank, FSB has failed to prosecute.

FACTS

Applicant filed a Trademark Application (No. 85951771) for the mark “HomeLoanServ” on June 5, 2013. On December 3, 2013, Plaintiff filed its Notice of Opposition (No. 91213869) to the HomeLoanServ Application on the grounds that it has rights in “Home Loan” and that Applicant’s use of “HomeLoanServ” is likely to cause confusion with “Home Loan.” The Board provided a schedule of dates, which set the following deadlines:

Time to Answer	1/18/2014
Deadline for Discovery Conference	2/17/2014
Discovery Opens	2/17/2014
Initial Disclosure Due	3/19/2014

Expert Disclosures Due	7/17/2014
Discovery Closes	8/16/2014
Plaintiff's Pretrial Disclosures	9/30/2014
Plaintiff's 30-day Trial Period Ends	11/14/2014

Applicant filed its Answer on January 18, 2014. Plaintiff took no additional action: it made no Initial Disclosures, it made no Expert Disclosures, it offered no Patent and Trademark Office records, and it has not engaged in discovery or submitted any testimony.

ARGUMENT

In this case, an involuntary dismissal is warranted because Plaintiff has completely failed to prosecute its opposition. Indeed, Plaintiff has not submitted a copy of its registration into evidence, has not submitted evidence, and has failed to take any testimony. Under Trademark Rule 2.122(d)(1), for an opposer's pleaded registration to be made part of the record, the opposition must be

accompanied by an original or photocopy of the registration prepared and issued by the United States Patent and Trademark Office showing both the current status of a title to the registration, or by a current printout of the information from the electronic database records of the USPTO showing the current status and title of the registration.

37 C.F.R. § 2.122(d)(1). Here, Plaintiff simply filed a Notice of Opposition without offering any original or photocopy of its alleged registration. Therefore, dismissal is appropriate under Trademark Rule 2.132(a).

Under Trademark Rule 2.132(a), when the time for taking testimony has passed and the plaintiff has failed to take testimony or offer any other evidence, an opposition may be dismissed for the plaintiff's failure to prosecute. 37 C.F.R. § 2.132(a). For example, in *Sterling Jewelers*

Inc. v. Romance & Co., Inc., the plaintiff filed an opposition proceeding on a likelihood of confusion theory but failed to provide its own registration for the record. 110 USPQ2d 1598, 1601 (TTAB 2014). Furthermore, the plaintiff failed to “submit any other evidence or take any testimony during its assigned testimony period . . .” *Id.* Because of the plaintiff’s failure to submit its registration, to submit any other evidence, or to take testimony, plaintiff “failed to demonstrate its standing or that it [was] entitled to any relief under its asserted claim of likelihood of confusion.” *Id.* at 1602. For that reason, the plaintiff’s opposition was dismissed under Trademark Rule 2.132(a). *Id.*

Here, Plaintiff’s time to take testimony passed on November 14, 2014. As in *Sterling*, Plaintiff failed to submit its registration for the record. Likewise, and as in *Sterling*, the plaintiff failed to submit any evidence supporting its asserted claim of likelihood of confusion and failed to take any testimony. As an opposer, however, Plaintiff “has the burden of proof to establish, by a preponderance of the evidence, that it has standing and a ground upon which relief may be granted.” *Id.* By failing to offer a registration, submit any evidence, or take any testimony, Plaintiff has failed to meet its burden. Because Plaintiff has failed to demonstrate that it has standing and has failed to demonstrate that is entitled to relief, its Opposition should be dismissed for failure to prosecute.

Respectfully submitted this 4th day of December, 2014.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By /Allison Parker/

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CERTIFICATE OF SERVICE

I, Allison Parker hereby certify that on this 4th day of December, 2014, a true and correct copy of the foregoing MOTION TO DISMISS has been served, by First Class U.S. Mail, postage prepaid to:

Kevin B. Murphy
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