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

Proceeding	91217589
Party	Plaintiff Rhythm Holding Limited
Correspondence Address	JOHN L WELCH WOLF GREENFIELD & SACKS PC 600 ATLANTIC AVENUE BOSTON, MA 02210 UNITED STATES jlwtrademarks@wolfgreenfield.com
Submission	Other Motions/Papers
Filer's Name	John L. Welch
Filer's e-mail	jlwtrademarks@wolfgreenfield.com
Signature	/johnlwelch/
Date	10/16/2015
Attachments	91217589 OPPOSITION TO REQUEST FOR RECONSIDERATION w exhibit-1.pdf(333418 bytes)

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

_____)	
RHYTHM HOLDING LIMITED,)	
)	
Opposer,)	
)	
v.)	Opposition No.
)	91217589
J & N SALES, LLC,)	
)	
Applicant.)	
_____)	

OPPOSER’S OPPOSITION TO
APPLICANT’S REQUEST FOR RECONSIDERATION

Opposer RHYTHM HOLDING LIMITED, by its counsel, hereby opposes Applicant’s Request for Reconsideration (Paper No. 15). Applicant J&N has chosen to ignore the more than 4000 documents produced by Opposer Rhythm in April and May of this year, has ignored Rhythm’s repeated invitations to confer over the disputed discovery demands, and has yet to even acknowledge Rhythm’s October 5th letter further attempting to amicably resolve the discovery disputes. In short, Applicant’s approach is a paradigm example of a party’s refusal to seek compromise in good faith, in favor of dilatory tactics and overblown rhetoric.

Rhythm will not respond to Applicant J&N’s one-sided recitation of the background facts regarding this dispute. J&N posits that once it filed its motion to compel (on May 5, 2015), there was no further need for any good faith effort to resolve this discovery dispute. Even after the Board’s ruling of August 29th (Paper No. 14), denying Applicant’s motion to compel and pointing out the good faith requirement,

Applicant sat on its hands (or jeans). Rather than contact Opposer Rhythm at that point, J&N chose to do nothing for 30 days, and then it filed the subject Request for Reconsideration (on September 28th).

Opposer Rhythm sent a letter to Applicant's counsel (by email and post) on October 5th, further explaining its position on what it believes to be the disputed discovery demands, pointing out by production number the documents (produced months ago, but apparently not considered by Applicant) that are responsive to the document requests, and providing the information it possesses vis-à-vis Applicant's interrogatories. A copy of that letter is attached as Exhibit 1 hereto. The letter requests that Applicant's counsel contact Rhythm's counsel if he would like to discuss these matters. No response to that letter has been received.

Opposer Rhythm remains willing to resolve whatever issues remain in dispute, if any, without further involvement of the Board, in the hope of moving this case to final resolution. Rhythm submits that Applicant's request for reconsideration be denied for lack of merit.

RHYTHM HOLDING LIMITED



John L. Welch
Wolf, Greenfield & Sacks, P.C.
600 Atlantic Avenue
Boston, MA 02210
617-646-8000

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon Applicant this 16th day of October, 2015, by mailing a copy thereof via first-class mail, postage pre-paid, to James A. Power, Jr., Esq., Power Del Valle LLP, 233 West 72nd Street, New York, NY 10023. A copy has also been served by email on this date.



John L. Welch

EXHIBIT 1

October 5, 2015

**VIA FIRST CLASS MAIL
& EMAIL**

James A. Power, Jr.
Power Del Valle LLP
233 West 72nd Street
New York, NY 10023

Re: Rhythm Holding Limited v. J&N Sales, LLC
Opposition No. 91217589
Our Ref. No. R2051.50002US00

Dear Mr. Power:

We have reviewed your client's recently-filed Request for Reconsideration of the Board's Order of August 29, 2015. In your client's motion papers, it expresses dissatisfaction with some of Opposer's discovery responses. While it is Opposer's view that the Request for Reconsideration and the underlying Motion to Compel are procedurally flawed and meritless, we nonetheless have reviewed Opposer's discovery responses to the interrogatories and documents requests mentioned in your papers (as well as the documents produced by Opposer to Applicant in April and May 2015), in the hope of moving this case forward as expeditiously as possible, keeping in mind the Board's observation that in this case "the parties' discovery needs would appear to be limited."

INTERROGATORIES

Interrogatory No. 1:

Opposer maintains its objection to this interrogatory on the ground that it seeks information that is not relevant to the subject matter of this proceeding and is not likely to lead to the discovery of admissible evidence. Nonetheless, Opposer states the following:

The application underlying pleaded Registration No. 2094048 for the mark RHYTHM was filed in 1995 by a company called Planet Earth Skateboards, Inc., claiming a first use date in 1994. The registration was subsequently assigned three times, in 2004, 2007, and in 2009. The second assignment identifies Jeff Larsen as Vice-President of Earth Products, Inc. The third assignment identifies Alan Charles Murray and Peter Scott Grey of Grey/Murray Partnership, and Hung Ho Wong as Director of Rhythm Holding Limited. These assignment documents are

publicly available in the USPTO assignment records. Opposer does not know who participated in the “consideration, deliberation, selection, adoption and/or approval” of the mark in or about 1994, and has no related documents.

Registration No. 3610417 for the mark RHYTHM issued from an application filed in 2006 by Earth Products, Inc. It has been twice assigned. The first assignment identifies Jeff Larsen as Vice-President of Earth Products, Inc. The second assignment identifies Peter Scott Grey and Jamahl S. Grey of Grey/Murray Partnership, and Hung Ho Wong as Director of Rhythm Holding Limited. These assignment documents are publicly available in the USPTO assignment records. Opposer does not know who participated in the “consideration, deliberation, selection, adoption and/or approval” of the mark in or about 2006, and has no related documents.

Registration No. 3884199 for the mark RHYTHM issued from an application filed in 2009 by Opposer, at the direction of Maurice Wong. Opposer has no documents related to the “consideration, deliberation, selection, adoption and/or approval” of the mark at this time.

Registration No. 3890579 for the mark RHYTHM LIVIN issued from an application filed in 2006 by R.G.I. Limited, and was assigned to Opposer in 2009. The assignment document identifies two individuals: Alan Charles Murray as Director of the assignor, and Hung Ho Wong as Director of the assignee. The assignment document is publicly available in the USPTO assignment records. Opposer does not know who participated in the “consideration, deliberation, selection, adoption and/or approval” of the mark, and has no related documents.

Interrogatory No. 2:

Opposer maintains its objection to this interrogatory on the ground that it seeks information that is not relevant to the subject matter of this proceeding and is not likely to lead to the discovery of admissible evidence. Nonetheless, Opposer states the following: Opposer has no documents relating to consideration of any phrase containing the word “rhythm.”

Interrogatory No. 4:

Opposer maintains its objection to this interrogatory on the ground that it seeks information that is not relevant to the subject matter of this proceeding and is not likely to lead to the discovery of admissible evidence. Nonetheless, Opposer states the following: Opposer has no such documents at this time.

Interrogatory No. 7:

Opposer stands by its objection that this interrogatory is incomprehensible.

Interrogatory No. 10:

Opposer maintains its objection to this interrogatory on the ground that it seeks information that is not relevant to the subject matter of this proceeding and is not likely to lead to the discovery of admissible evidence. Nonetheless, Opposer states the following: The person “most knowledgeable” as to Opposer’s first and subsequent awareness is William Maguire. He became aware of the opposed application and the mark when he received the Trademark Watch Notice produced as Rhythm Production Document No. 2624. The documents filed in this proceeding reflect his subsequent and continuing awareness of the mark.

Interrogatory No. 16:

Opposer maintains its objection to this interrogatory on the ground that it seeks information that is not relevant to the subject matter of this proceeding and is not likely to lead to the discovery of admissible evidence. Nonetheless, Opposer states the following. See the underlying applications for the pleaded registrations for the identities of the attorneys who filed the applications. As to who reviewed the first, second, and fourth applications, Opposer has no knowledge at this time. As to the third, Will Maguire and Maurice Wong of Rhythm Holding Limited.

DOCUMENT REQUESTS

Document Request No. 1:

To the extent documents have been identified they have been produced, except for those that are publicly available.

Document Request No. 2:

The documents have been produced. See response to Request No. 12 below.

Document Request No. 3:

The documents have been produced. See Rhythm Production Documents Nos. 2446-2891.

Document Request No. 10:

The documents have been produced. See Rhythm Production Documents Nos. 2623-2639.

Document Request No. 11:

See the documents produced by Applicant in this proceeding, and see Rhythm Production Documents No. 2446-2891.

Document Request No. 12:

See the following Rhythm Production Documents: 0001-1289, and 3046-4031.

Document Request No. 13:

Opposer maintains its objection to this request on the ground that, to the extent the request is comprehensible, it seeks documents that are not relevant to the subject matter of this proceeding and are not likely to lead to the discovery of admissible evidence. Further responding, Opposer states that there are none.

Document Request No. 14:

The documents have been produced. See Rhythm Production Documents No. 2446-2891.

Document Request No. 15:

Opposer maintains its objection to this request on the ground that it seeks documents that are not relevant to the subject matter of this proceeding and are not likely to lead to the discovery of admissible evidence. Further responding, see Rhythm Production Documents Nos. 0001-2445 and 2892-4131.



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James A. Power, Jr.

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Document Request No. 18:

Opposer maintains its objection to this request on the ground that it seeks documents that are not relevant to the subject matter of this proceeding and are not likely to lead to the discovery of admissible evidence. Further responding, as presently advised, there are none.

Document Request No. 19:

Opposer maintains its objection to this request on the ground that it seeks documents that are not relevant to the subject matter of this proceeding and are not likely to lead to the discovery of admissible evidence. Further responding, as presently advised, there are none.

Document Request No. 20:

Opposer maintains its objection to this request on the ground that, to the extent the request is comprehensible, it seeks documents that are not relevant to the subject matter of this proceeding and are not likely to lead to the discovery of admissible evidence. Further responding, as presently advised, there are none.

Document Request No. 22:

See the documents produced by Applicant in this proceeding, as well as Applicant's website at www.rhythminblues.com, and the application files that are publicly available at the USPTO website.

If you would like to discuss any of these matters, please contact me so that we can arrange for a mutually-convenient time and date.



Wolf Greenfield

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James A. Power, Jr.

October 5, 2015

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Very truly yours,

WOLF, GREENFIELD & SACKS, P.C.

A handwritten signature in black ink that reads "John L. Welch". The signature is fluid and cursive, with a large initial "J".

John L. Welch

JLW/jw/smo

cc: William E. Maguire, Esq.