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

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|------------------------|---|
| Proceeding | 91221324 |
| Party | Plaintiff Nintendo of America, Inc. |
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| Submission | Motion for Sanctions (Other) |
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| Signature | /katherine keating/ |
| Date | 08/10/2016 |
| Attachments | Motion_for_Sanctions_-_SUPAH_MARRIO.pdf(11352 bytes) |

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

NINTENDO OF AMERICA INC.,

Opposer,

v.

MARIO JONES,

Applicant.

Opposition No. 91,221,324

Serial No.: 86/283,191

Mark: SUPAH MARRIO

Filed: May 16, 2014

Published: December 2, 2014

Classes: 41

**OPPOSER’S MOTION FOR ENTRY OF SANCTIONS IN THE FORM OF JUDGMENT
SUSTAINING OPPOSITION**

Pursuant to 37 C.F.R. § 2.120(g)(1), Fed. R. Civ. P. 37(B)(32), and TBMP § 527.01(a), Opposer Nintendo of America Inc. (“Nintendo”) hereby moves for entry of judgment in favor of Nintendo, sustaining its opposition to Application No. 86/283,191, as a sanction for the failure of Applicant Mario Jones (“Applicant”) to comply with the Board’s July 1, 2016 order to serve written responses to Nintendo’s second set of interrogatories and document requests and to produce documents responsive to the second set of document requests.

As fully documented in the record, Applicant has engaged in a pattern of disregarding his obligations as a litigant in these proceedings. Applicant’s failure to participate in these proceedings has led to a number of discovery motions by Nintendo – including Nintendo’s first motion to compel (filed November 12, 2015) (Doc. 10), Nintendo’s unconsented motion to extend discovery period and trial dates (filed March 25, 2016) (Doc. 14), and Nintendo’s second motion to compel (filed May 19, 2016) (Doc. 16).

Applicant's disregard for the Board's most recent order compelling discovery responses justifies the present motion for sanctions in the form of judgment in favor of Nintendo. On July 1, 2016, in response to Nintendo's second motion to compel discovery responses, the Board ordered that "Applicant is allowed until thirty days from the mailing date set forth in this order to (1) serve written responses to Opposer's second set of interrogatories and second set of document requests, and (2) produce documents responsive to the second set of document requests." Order (filed July 1, 2016) (Doc. 18). More than thirty days have passed since the Board issued its order, and Applicant has not served written responses to Nintendo's second set of interrogatories and document requests and has not produced documents responsive to Nintendo's second set of document requests. Declaration of Katherine Keating, at ¶ 2. Nor has Applicant communicated to Nintendo about the discovery requests or the Board's order. *Id.* In fact, despite persistent attempts by Nintendo to communicate with Applicant by telephone, e-mail, and postal mail about various issues in these proceedings, Nintendo has had no communication from Applicant in over eight months. *Id.* at ¶ 3.

Under the circumstances, entry of judgment sustaining the opposition is an appropriate sanction under 37 C.F.R. §120(g). The "entire experience of this case" supports the conclusion that "[t]here is no reason to assume that, given additional opportunities, [Applicant] will fulfill his obligations as a party to the proceeding." *Benedict v. Super Bakery Inc.*, 665 F.3d 1263 (Fed. Cir. 2011). "[A]ny sanction short of judgment would be futile and unfair to [Nintendo], which brought this case well over a year ago and has been unable, despite diligent efforts, to move it forward, due to [Applicant's] intransigence." *Patagonia, Inc. v. Azzolini*, 109 USPQ2d 1859 (TTAB Feb. 28, 2014) (entering judgment against pro se respondent in cancellation proceedings); *see also, e.g., MySpace v. Mitchell*, 91 USPQ2d 1060 (TTAB May 11, 2009)

(petition for cancellation granted as sanction where respondent engaged in a course of delay, failing to comply with discovery requests and disregarding a Board order compelling responses to those discovery requests).

Nintendo therefore respectfully requests that the Board issue an order entering judgment in favor of Nintendo, sustaining the opposition to Application No. 86/283,191. Applicant requests that the proceedings be suspended pending disposition of this motion.

Respectfully submitted,

BRYAN CAVE LLP

Dated: August 10, 2016

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Attorneys for NINTENDO OF AMERICA INC.

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**DECLARATION OF KATHERINE KEATING IN SUPPORT OF
OPPOSER’S MOTION FOR ENTRY OF SANCTIONS IN THE FORM OF JUDGMENT
SUSTAINING OPPOSITION**

I, Katherine Keating, declare as follows:

1. I am an attorney in the law firm of Bryan Cave LLP, counsel of record for Opposer Nintendo of America Inc. (“Nintendo”) in the above-captioned proceedings. I have personal knowledge of the facts set forth in this declaration and if called to do so, I could and would testify competently to such facts.

2. As of today, Applicant has not served written responses to Nintendo’s second set of interrogatories and document requests and has not produced documents responsive to Nintendo’s second set of document requests. Nor has Applicant communicated with me or Nintendo as to the discovery requests or the Board’s July 1, 2016 order compelling discovery responses.

3. Despite numerous attempts throughout 2016 to contact Applicant by telephone, e-mail, and postal mail, as documented in Nintendo’s March 25, 2016 unconsented motion to

extend discovery period and trial dates (Doc. 14) and second motion to compel (May 19, 2016) (Doc. 16), there has been no communication from Applicant since December 4, 2015.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Dated: August 10, 2016

/katherine keating/
Katherine Keating

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **OPPOSER'S MOTION FOR ENTRY OF SANCTIONS IN THE FORM OF JUDGMENT SUSTAINING OPPOSITION** and **DECLARATION OF KATHERINE KEATING IN SUPPORT OF OPPOSER'S MOTION FOR ENTRY OF SANCTIONS IN THE FORM OF JUDGMENT SUSTAINING OPPOSITION** has been served on Applicant Mario Jones by sending said copy for overnight delivery via FedEx on August 10, 2016, and also by mailing said copy on August 10, 2016, via First Class Mail, postage prepaid to:

Mario Jones
355 Crescendo Way
Silver Spring, MD 20901-5020

Executed on August 10, 2016, at San Francisco, California.

/katherine keating/
Katherine Keating