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

Proceeding	91221837
Party	Defendant Bad Yogi LLC
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

BIBIJI INDERJIT KAUR PURI, an individual,	)	Opposition No.: 91221837
Opposer,	)	Mark: BAD YOGI
v.	)	App. S/N: 86/432,152
BAD YOGI, LLC, a Florida limited liability company,	)	Pub. Date: April 7, 2015
Applicant.	)	

MOTION FOR INVOLUNTARY DISMISSAL OF OPPOSITION WITH PREJUDICE FOR FAILURE TO TAKE TESTIMONY UNDER 37 C.F.R. § 2.132

Pursuant to Trademark Rules 2.132(a) and (b), Applicant, Bad Yogi, LLC ("Applicant"), by and through its undersigned counsel, hereby moves to dismiss trademark opposition proceeding number 91221837 ("Opposition") with prejudice for failure to prosecute, and in the alternative, to dismiss the Opposition with prejudice for opposer's, Bibiji Inderjit Kaur Puri ("Opposer"), failure to show a right to relief. Throughout this Opposition, Opposer has introduced no evidence of record to support its alleged grounds for opposition. During this proceeding, Opposer served no discovery, and introduced no evidence, whether by expert testimony or otherwise, to support the allegations in its Notice of Opposition.

Opposer has not served Applicant with any notices for taking testimony or filed any motions for extending trial dates. As such, Opposer is no longer able to obtain any testimony or submit the evidence necessary to sustain this Opposition. Therefore, Applicant respectfully requests dismissal of the Opposition with prejudice. This motion is timely pursuant to Rule 2.132 and TBMP § 504.32.

I. BACKGROUND

On or about May 7, 2015, Opposer filed the Notice of Opposition, alleging four grounds for opposing registration of Applicant's application serial number 86/432,152 ("Application"). These four grounds are: (i) likelihood of confusion, (ii) dilution, (iii) false designation of origin, and (iv) unfair business practices (CA Business Code §17200). TTABVUE #1.

The parties held their discovery conference on July 14, 2015. The parties then began initial settlement discussions soon after, and on or about July 27, 2015 Applicant's counsel communicated a settlement offer to Opposer's counsel. Counsel for Opposer did not respond, and counsel for Applicant has receive no more communication from Opposer or its counsel during this Opposition proceeding. Applicant's counsel attempted follow up phone calls, but to no avail. On or about September 24, 2015, Applicant's counsel sent emailed its final offer in an attempt to settle the matter and never received a reply from Opposer or its counsel. All attempts by Applicant's counsel to follow up with this email were unreturned, including multiple phone calls made to Opposer's counsel in the weeks following.

Instead of communicating with Applicant, on October 2, 2015 Opposer served its initial disclosures, a true and correct copy of which is attached hereto as Exhibit "A."[1] On February 24, 2016, Opposer filed a notice of reliance with the Board. TTABVUE #7. However, Opposer served no discovery prior to the February 29, 2016 date for close of discovery. Opposer produced no evidence of record prior to its April 14, 2016 pre-trial disclosure deadline. There were no attachments to Opposer's Notice of Opposition, its initial disclosures, or its Notice of Reliance. Opposer took no testimony and filed no case briefs during its testimony period, which closed on May 29, 2016. Throughout this proceeding, Opposer made no requests for extensions of time or for suspensions of this Opposition.

[1] This document is erroneously titled "Applicant's" initial disclosures rather than "Opposer's".

Based on the foregoing facts and the reasons set forth below, the Board should enter judgment of involuntary dismissal with prejudice against Opposer under Trademark Rule 2.132(a) for Opposer's failure to prosecute this Opposition, or in the alternative, involuntary dismissal with prejudice under Trademark Rule 2.132(b) for Opposer's failure to show a right to relief.

II. DISMISSAL UNDER TRADEMARK RULE 2.132(a) FOR FAILURE TO PROSECUTE.

Applicant is entitled to judgment under Trademark Rule 2.132(a) because Opposer's testimony period has expired, and Opposer has not taken any testimony or made any other evidence of record to sustain its Opposition. Opposer's inaction throughout this Opposition is the result of Opposer's clear, intentional, and calculated litigation strategy. Since Opposer's delay has been directly within its control, Opposer cannot establish "good and sufficient cause" under Rule 2.132(a) to reopen its testimony period to continue this proceeding. Applicant is therefore entitled to dismissal of this Opposition with prejudice.

A. Failure to Introduce Evidence.

During this proceeding, Opposer has made only limited evidentiary filings, which consist of the Notice of Opposition, Opposer's initial disclosures, and its Notice of Reliance. None of these documents comply with the requirements of Trademark Rule 2.122(d), and they are therefore ineffective to make Opposer's trademark registrations and applications of record in this proceeding.

1. Notice of Opposition.

In its Notice of Opposition, Opposer identified U.S. Registration Numbers 4,412,548, 1,980,514, 3,595,462, and 3,595,461 ("Registrations"), and U.S. trademark application serial numbers 77/871,656, 77/784,202, 85/942,810, and 86/137,651 ("Applications"). TTABVUE #1,

¶¶ 7-14. To be made of record in the proceeding, registrations entered on pleadings must comply with Trademark Rule 2.122(d)(1). This rule requires each such registration to 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 and current title to the registration." 37 C.F.R. § 2.122(d)(1). Opposer's Notice of Opposition did not include or attach any copies of the Registrations or Applications, and no documents showing the current status and current title. Therefore, no Registrations or Applications identified in the Notice of Opposition have been made of record in this proceeding.

2. Notice of Reliance.

In its Notice of Reliance, Opposer once again identified the Registrations, along with four additional U.S. trademark applications that were not identified in the Notice of Opposition. These new applications have serial numbers 77/636,305, 77/889,992, 85/920,241, and 86/432,152 (also included within the definition of "Applications"). However, the Notice of Reliance is also ineffective to introduce the Registrations and Applications as evidence of record because it was untimely, and it failed to comply with Trademark Rule 2.122(d)(2).

A party may make registrations of record through a Notice of Reliance, which "shall be accompanied by a copy (original or photocopy) of the registration prepared and issued by the Patent and Trademark Office showing both the current status of and current title to the registration. The Notice of Reliance shall be filed during the testimony period of the party that files the notice." 37 C.F.R. § 2.122(d)(2). Opposer's Notice of Reliance was untimely filed on February 24, 2016, prior to the opening of Opposer's testimony period, which did not begin until April 29, 2016. TTABVUE #6, at 2.

Even if the Board excuses the untimeliness of the Notice of Reliance, it is ineffective because it lacks the corroborating evidence required by Trademark Rule § 2.122(d)(2) to support the probative value of the Registrations and Applications. Opposer has failed to provide copies of the Registrations, or electronic printed copies, attached to the Notice of Reliance. Opposer also failed to attached any USPTO documents reflecting the current status and current title of the registrations to effectively be made of record in the Opposition.

3. Exclusion of Registrations and Applications.

The Trademark Rules provide a simple, straightforward and inexpensive procedure to prove ownership and status of pleaded registrations. *El Encanto, Inc. v. La Tortilla Factory, Inc.*, 201 Fed. App'x 773, 776 (Fed. Cir. 2006). Additionally, when such minimal requirements have been repeatedly laid out, and the relevant regulations are clear, Opposer's failure to follow them is at its own peril. *Volkswagonwerk Aktiengesellschaft v. Clement Wheel Co., Inc.*, 204 USPQ 76, 78 (TTAB 1979) (excluding certified copies of registrations from evidence that did not reflect current title); *Marriott Corporation v. Pappy's Enters., Inc.,* 192 USPQ 735 (TTAB 1976) (excluding copies of registration attached to a notice of reliance for failure to show status and title); *Sterling Jewelers Inc. v. Romance & Co., Inc.*, 110 USPQ2d 1598 (TTAB 2014) (holding that opposer's pleaded registrations were not made of record for failure to comply with Rule 2.122 when copies of the registrations were attached to the notice of opposition with no indication of current status or ownership).

The Board has held that dismissal pursuant to Rule 2.132(a) is proper when a plaintiff's failure to comply with Trademark Rule 2.122(d) resulted in there being no evidence of record to sustain the opposition. *See, e.g.*, *Prakash Melwani v. Allegiance Corp.*, 97 U.S.P.Q.2d 1537 (TTAB 2010). The Board has specifically rejected the adequacy of inputting registration

numbers into the ESTTA when filing a notice of opposition, holding that this act alone does not make the registrations of record. *Prakash Melwani*, 97 U.S.P.Q.2d 1537 (TTAB 2010) (granting dismissal under Rule 2.132(a) where opposer failed to attach to its opposition notice any originals or copies of the identified registrations).

Here, Opposer failed to follow the plain language of Rule 2.122. Unlike *Volkswagenverk*, *Marriott*, and *Sterling Jewelers*, in which attached copies were excluded for minor defects, Opposer has not attached <u>any</u> copies of the Registrations or Applications showing their current status or ownership. Thus, Opposer's mere identification of the Registrations and Applications in its Notice of Opposition and Notice of Reliance is insufficient to make either of record in this proceeding.[2] Without this evidence of record, dismissal of this Opposition with prejudice under Rule 2.132(a) is proper.

B. <u>Opposer Cannot Establish Excusable Neglect to Reopen Its Testimony Period</u>.

Since Opposer has made no evidence of record in this proceeding, the Board should grant Applicant's motion for judgement under Trademark Rule 2.132(a) unless Opposer can show good and sufficient cause why judgment should not be rendered against it. The "good and sufficient" cause requirement under Rule 2.132(a) is determined according to the "excusable neglect" standard under Fed. R. Civ. P. 6(b)(1)(B). *HKG Indus., Inc. v. Perma-Pipe, Inc.*, 49 USPQ2d 1156, 1157 (TTAB 1998). This standard was established by the Supreme Court in *Pioneer Investment Servs. Co. v. Brunswick Assoc. Ltd.,* 507 U.S. 380, 395 (1993), and adopted by the Board in *Pumpkin Ltd. v. The Seed Corps.*, 43 USPQ2d 1582 (TTAB 1997).

[2] Trademark Rule 2.122 does not provide for registrations to be made of record via initial disclosures. Even if it did, Opposer's initial disclosures also failed to attach any USPTO records showing the current status of ownership and title of the Registrations or Applications.

There are four *Pioneer* factors to be considered in determining whether a party's neglect is excusable. These factors are: (1) the danger of prejudice to the non-moving party; (2) the length of delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the moving party; and (4) whether the moving party has acted in good faith. *Pioneer Investment Servs. Co.,* 507 U.S. at 395; *Pumpkin Ltd.*, 43 USPQ2d 1582 (TTAB 1997). These factors do not carry equal weight; the third factor is of paramount importance. *Baron Phillipe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 USPQ2d 1848, 1852 (TTAB 2000); *Dating DNA, LLC v. Imagini Holdings Ltd.,* 94 USPQ2d 1889, 1892 (TTAB 2010); *Vital Pharm., Inc. v. Kronholm*, 99 USPQ2d 1708, 1710 (TTAB 2011).

A party's intentional litigation strategy of inaction, failure to take discovery, or failure to take testimony does not constitute excusable neglect. *See, e.g.*, *Luster Prods., Inc. v. Van Zandt*, 104 USPQ2d 1877 (TTAB 2012) (finding no excusable neglect where an applicant made the calculated strategic decision not to take discovery). While attempts at settlement are generally favored by the Board, they do not excuse Opposer's failure to act within the prescribed time limits for taking action according to the Board's scheduling order. *See Atlanta-Fulton County Zoo Inc. v. DePalma,* 45 USPQ2d 1858, 1859 (TTAB 1998) (concluding that the existence or belief in settlement negotiations does not justify inaction or delay with regards to deadlines set by the Board or Trademark Rules); *Vital Pharm., Inc.*, 99 USPQ2d at 1711 ("The purported existence of settlement discussions, simply did not prevent opposer either from taking testimony during the assigned period or filing a timely brief, or filing timely requests to extend either period prior to the expiration of the period.").

C. Analysis of the *Pioneer* Factors.

1. Third *Pioneer* Factor.

Since the third *Pioneer* factor is considered to be the most important, and usually dispositive, the analysis begins here. This factor considers the reason for the delay and whether it was in reasonable control of the moving party. In this case, Opposer's inaction throughout this Opposition is clearly a calculated litigation strategy by Opposer, which is directly in Opposer's control. The facts show that Opposer did nothing throughout this Opposition to introduce evidence of record to support the fact-intensive grounds for opposing Applicant's Application. Opposer's choice not to serve discovery, respond to settlement communications, or seek any extensions of time or suspensions of this proceeding was directly in the control of Opposer, and it is not excusable neglect. *See e.g., Old Nutfield Brewing Co. v. Hudson Valley Brewing Co.,* 65 USPQ2d 1701, 1702-04 (TTAB 2002) (concluding that opposer's failure to prosecute because of defendant's failure to answer a notice of opposition did not constitute excusable neglect; plaintiff's failure to respond was at "its own risk"); *Mattel, Inc. v. Henson*, 88 Fed. App'x 401, 403 (Fed. Cir. 2004) (concluding that opposer's failure to prosecute because of defendant's failure to answer a notice of opposition did not constitute excusable neglect).

The Board has previously admonished the type of neglect demonstrated by Opposer in this proceeding, explaining that "[o]pposer brought this case and, in so doing, took responsibility for moving forward on the established schedule." *Atlanta-Fulton Cty. Zoo Inc. v. DePalma,* 45 U.S.P.Q.2d 1858, 1860 (TTAB 1998). It is the Opposer which bears the burden of coming forward with evidence to support its case. *Old Nutfield Brewing Co.*, 65 U.S.P.Q.2d 1701 (TTAB Aug. 6, 2002); *HKG Indus., Inc. v. Perma-Pipe Inc.,* 49 USPQ2d 1556 (TTAB 1998) (holding that the death of plaintiff's lead counsel did not weigh this factor in favor of plaintiff

absent any evidence to show that the death prevented plaintiff from participating in its testimony period).

Here, Opposer has given no reason for delay and no made effort to extend the given testimony period or seek suspension of this proceeding – actions that are clearly within Opposer's control. Therefore, the third Pioneer factor weighs heavily, if not dispositively, against a finding of excusable neglect.

2. First *Pioneer* Factor.

The first *Pioneer* factor considers the danger of prejudice to the non-moving party. Since Opposer has not identified any evidence or witnesses during this Opposition, at this time Applicant is not aware of any spoliation of evidence that could arise at a later time, or which may have already occurred. In view of the unknown facts at this time, this factor is neutral in the *Pioneer* factor analysis.

3. Second *Pioneer* Factor.

The second *Pioneer* factor weighs heavily against a finding of excusable neglect. Under this factor, the Board considers the unavoidable delay arising from briefing and deciding the motion to reopen and related motions, the impact on other litigants before the Board, and the impacts on the Board's strained resources. *Pumpkin Ltd.*, 43 USPQ2d at 1587-88; *PolyJohn Enters. v. 1-800-Tiolets, Inc.*, 61 USPQ2d 1860, 1862 (TTAB 2002); *Old Nuftield Brewing Co.*, 65 USPQ2d at 1703. To defeat Applicant's instant Rule 2.132(a) motion, Opposer must move to reopen its testimony period. Adjudicating contested motions to reopen is taxing on the Board's scarce resources. These motions generally "come before the Board solely as a result of a sloppy practice or inattention to deadlines on the part of litigants or their counsel. The Board's interest

in deterring such sloppy practice weighs heavily against a finding of excusable neglect." *Pumpkin Ltd.*, 43 USPQ2d at 1588.

In this proceeding, reopening Opposer's testimony period would delay the resolution of this Opposition by several months, thereby causing a substantial impact on the Board's docket and the resources of the parties. *Mattel, Inc. v. Henson*, 88 Fed. App'x 401 at 403 (denying a motion to reopen due in part to the delay caused from reopening discovery and testimony periods after the plaintiff failed to prosecute, and concluding that such a delay would "be significant, and run counter to TTAB's interest in expeditious adjudication of the cases on its dockets").

Based on the facts of this Opposition and the Board's precedents, the second *Pioneer* factor weighs heavily against a finding of excusable neglect.

4. Fourth *Pioneer* Factor.

The fourth *Pioneer* factor considers whether the Opposer acted in good faith. There is no evidence on this factor at this time, and therefore this factor remains neutral.

5. Balancing the *Pioneer* Factors.

Viewing the evidence as a whole, the detrimental impacts on the Board's judicial proceedings under the second *Pioneer* factor and the acts and omissions within Opposer's reasonable control under the third *Pioneer* factor heavily outweigh any absence of prejudice or bad faith. In many of its prior decisions, the Board has found no excusable neglect despite the absence of prejudice or bad faith. *See e.g., FirstHealth of the Carolinas v. CareFirst of Marlyand, Inc.,* 479 F. 3d 825 (Fed. Cir. 2007) (affirming the Board's denial of a motion to reopen despite no evidence of prejudice or bad faith); *Pumpkin Ltd.*, 43 USPQ at 1588 (weighing all four factors together, motion to reopen denied because evidence on the second and third *Pioneer* factors outweighed the absence of prejudice and bad faith under the first and fourth

Pioneer factors, respectively); *Dating DNA LLC v. Imagini Holdings Ltd.,* 94 USPQ2d 1889, 1892 (TTAB 2010); (same); *Vital Pharm. v. Kronholm*, 99 USPQ2d 1708, 1710 (TTAB 2011) (same); *Old Nutfield Brewing Co. v. Hudson Valley Brewing Co.,* 65 USPQ2d 1701, 1702-04 (TTAB 2002) (same); *Melwani v Allegiange Corp.,* 97 USPQ2d 1537, 1542 (TTAB 2010) (same); *PolyJohn Enters. V. 1-800-Toilets, Inc.,* 61 USPQ2d 1860, 1860 (TTAB 2002) (same).

III. DISMISSAL UNDER TRADEMARK RULE 2.132(b) FOR FAILURE TO SHOW A RIGHT TO RELIEF.

Even if judgment under Rule 2.132(a) is not appropriate, and even if the Registrations and Applications are of record, Applicant is entitled to dismissal of this Opposition with prejudice pursuant to Rule 2.132(b). Dismissal under this Rule is appropriate where the opposer offers no evidence other than a copy or copies of Patent and Trademark Office records, and such records do not demonstrate a right to relief. Here, Applicant is entitled to judgment under Rule 2.132(b) on two grounds: (i) Opposer's failure to make a prima facie case of ownership of a valid trademark, and (ii) Opposer's failure to establish any facts which support any causes of action identified in its Notice of Opposition.

A. Failure to Demonstrate Prima Facie Ownership and Validity.

Several of Opposer's grounds for opposition, such as priority, likelihood of confusion, and dilution, require proof of ownership of a valid trademark. Even if the Registrations and Applications are of record, Opposer has made no showing of their current ownership. The Notice of Opposition alleges that the Registrations and Applications are owned by third parties "for the benefit" of Opposer. TTABVUE #1, ¶¶ 7-12; *see also*, Notice of Reliance, TTABVUE #7, ¶¶ 1-2. These third parties include Wai Lana Productions, LLC, East West Tea Company, and Yogi Botanicals International Corporation. *Id.* Opposer has introduced no evidence or testimony of record to explain what is meant by "for the benefit" or to explain with particularity

the current ownership status of the Registrations. Neither has Opposer made of record any of the documents from the USPTO website showing the current ownership status recorded in the assignment database. For this reason alone Opposer cannot make a prima facie showing of ownership of the Registrations and Applications, and Applicant is entitled to dismissal with prejudice.

In addition, Opposer has introduced no evidence or testimony supporting a prima facie case of validity of the Registrations or Applications. Several of the Registrations may have required renewal, and Opposer has not made any indication of record of the current status of the Registrations, whether they are cancelled, expired, or renewed. A cancelled or expired registration is not entitled to the statutory resumption of ownership or validity, and it has no probative value. *Sunnen Prods. Co. v. Sunex Int'l, Inc.*, 1 USPQ2d 1744, 1747 (TTAB 1987).

Neither has Opposer made a prima facie showing that the Applications are valid and subsisting. There is no indication of record as to the current status of the Applications, whether they are rejected, suspended, amended, allowed, or opposed by third parties. For these reasons, Applicant is entitled to dismissal with prejudice under Rule 2.132(b).

B. <u>Failure to Demonstrate Prima Facie Support for Grounds of Opposition</u>.

The grounds for opposition cited by Opposer require factual and evidentiary underpinnings for which Opposer has made no prima facie showing. The Registrations and Applications, even if of record, do not provide the required prima facie evidence, and Opposer cannot show a right to relief. Applicant is therefore entitled to dismissal with prejudice.

1. Likelihood of Confusion.

Opposer has introduced no evidence or testimony of record to demonstrate a right to relief under Section 2(d) on the grounds of likelihood of confusion. TTABVUE #1, ¶¶ 2-20.

"[T]he ultimate conclusion regarding likelihood of confusion is necessarily drawn from all probative facts in evidence in each individual case." *Fautless Search Co. v. Sales Prods. Assoc., Inc.*, 530 F.2d 1400, 1401 (CCPA 1976). Each case must be decided on its own facts. *Id.*

Here, the factual analysis begins with the differences between the parties' marks, as shown below:

Opposer's Marks	**Applicant's Mark**
LITTLE YOGIS	BAD YOGI
YOGI TEA	
YOGIBOTANICALS	
YOGI BOTANICALS ORGANIC SOLUTIONS	
YOGI OIL	
YOGI NUT	
YOGI	

The parties' goods and services are also different. Opposer alleges that its goods and services are tea, cereal snack foods, juices, herbs and spices, bath products, and beauty products. TTABVUE #1, ¶ 6. By contrast, Applicant's goods and services identified in the Application are unrelated – they include athletic tops and bottoms for yoga, graphic t-shirts, and providing on-line, non-downloadable videos featuring yoga instructions.

Opposer has not established that the sight, sound, connotation, or commercial impressions of the parties' respective marks are similar. Opposer has introduced no evidence or

testimony, whether by consumer surveys, expert testimony or otherwise, to establish the similarity of commercial impressions in the view of consumers, overlapping channels of trade, similarity of advertising and marketing channels, overlapping classes of consumers, instances of actual confusion, or any of the other *DuPont* factors. In view of the differences in each of the parties' respective marks and goods and services, Opposer has introduced no facts or evidence that demonstrate a right to relief based on a likelihood of confusion.

Finally, in the Notice of Opposition, Opposer alleges that likelihood of confusion will arise because Applicant's mark is a natural zone of expansion of the marks and goods identified in the Registrations. TTABVUE #1, ¶ 15. The issue when determining the zone of expansion is whether the buying public might reasonably confuse the junior user's mark in its expansion market with the original, senior usage. *Carnival Brand Seafood Co. v. Carnival Brands, Inc.*, 187 F.3d 1307, 1310-11 (11th Cir. 1999); *see also*, *McCarthy on Trademarks and Unfair Competition* § 24:21 (4th ed.). Again, Opposer has introduced no evidence or testimony to demonstrate the understating of the buying public. This understanding cannot be derived from the face of the Registrations and Applicant's Application – it is an inherently factual determination for which Opposer has not sustained its evidentiary burden. Therefore, Opposer has demonstrated no right to relief on its likelihood of confusion ground for this Opposition.

2. Dilution.

As its second ground for opposing the Application, Opposer alleges that registration will dilute Opposer's marks. Under 15 U.S.C. § 1125(c)(1), relief is available only for owners of a famous mark. To determine whether Opposer's marks have acquired the requisite fame, the Board must consider four factors: (1) the duration, extent, and geographic reach of advertising and publicity of the mark, whether advertised or publicized by the owner or third parties; (2) the

amount, volume, and geographic extent of sales of goods or services offered under the mark; (3) the extent of actual recognition of the mark; and (4) whether the mark was registered under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register. 15 U.S.C. § 1125(c)(2). *See Bd. of Regents, Univ. of Texas Sys. ex rel. Univ. of Texas at Austin v. KST Elec., Ltd.,* 550 F. Supp. 2d 657, 674 (W.D. Tex. 2008). Opposer has introduced no evidence of record that is probative of these factors. Therefore, Opposer has shown no right to relief based on this ground of opposition, and Applicant is entitled to dismissal with prejudice.

3. False Designation of Origin.

Opposer opposes registration of the Application on the grounds of "false designation of origin." TTABVUE #1, ¶¶ 25-26. This ground of opposition is unintelligible, and it is questionable whether it is even a valid ground of opposition. Regardless, Opposer has certainly introduced no evidence or testimony in support of this allegation, and the Board should therefore dismiss it with prejudice.

4. Unfair Business Practices.

Finally, Opposer alleges a claim for "Unfair Business Practices" under §17200 of the California Business and Professions Code. TTABVUE #1, ¶ 26-27. Opposer failed to introduce any evidence or testimony of record to support this ground of opposition. In fact, Opposer has not even alleged that Applicant conducts any business in the State of California, much less in a manner that is unfair or fraudulent, whether by using Applicant's mark or otherwise. It is unclear how Applicant's registration of its mark is actionable under the California statute. Regardless, Opposer has made no evidence or testimony of record sufficient to demonstrate a right to relief under this ground of opposition.

For the reasons set forth above, Opposer's failure to introduce evidence and testimony of record in this Opposition renders Opposer unable to show a right to relief on any of its grounds for opposing registration of Applicant's Application. Therefore, Applicant is entitled to judgment of dismissal of this Opposition with prejudice under Rule 2.132(b).

IV. CONCLUSION

Opposer has failed to prosecute the Opposition which it has brought before the Board. No evidence or testimony has been made of record to support any claim asserted by Opposer or its grounds for opposing registration of Applicant's Application. For the reasons discussed above, Applicant respectfully requests that pursuant to Rule 2.132(a) the Board enter judgment of dismissal of this Opposition with prejudice for failure to prosecute, or in the alternative, under Rule 2.132(b) for Opposer's failure to demonstrate a right to relief.

Respectfully submitted,

Date: June 27, 2016

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Certificate of Service

I hereby certify that a true and complete copy of the foregoing Motion for Involuntary Dismissal with Prejudice has been served on Counsel for Opposer by mailing said copy on the date undersigned via Certified Mail, Return Receipt Requested to:

Michael A. Long
The Soni Law Firm
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Pasadena, CA 91101

Date: June 27, 2016

/Stephen E. Kelly/
Stephen E. Kelly

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

In Re Appl. Serial No.: 86432152
For the mark: BAD YOGI
Published on: April 7, 2015

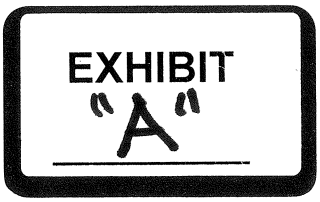
BIBIJI INDERJIT KAUR PURI Opposer, v. BAD YOGI LLC, Applicant.	Opposition No.: **91221837**

APPLICANT'S RULE 26(a)(1) INITIAL DISCLOSURES

The following disclosures are made without prejudice to Opposer, BIBIJI INDERJIT KAUR PURI ("Bibiji"). Bibiji reserves the right to amend or supplement her disclosures.

I. INDIVIDUALS LIKELY TO HAVE DISCOVERABLE INFORMATION WITH SUBJECTS OF THAT INFORMATION APPLICANT MAY USE TO SUPPORT HER CLAIMS OR DEFENSES, UNLESS THE USE WOULD BE SOLELY FOR IMPEACHMENT:

1. **Bibiji Inderjit Kaur Puri**, Opposer, c/o THE SONI LAW FIRM 116 S. Euclid Avenue, Pasadena, CA 91101 (626) 683-7600.



2. **Vinie Sukhmanee I Corporation**, Opposer's Licensee, c/o THE SONI LAW FIRM 116 S. Euclid Avenue, Pasadena, CA 91101 (626) 683-7600.

3. **Yogi Botanicals International Corporation**, Opposer's Licensee, c/o THE SONI LAW FIRM 116 S. Euclid Avenue, Pasadena, CA 91101 (626) 683-7600.

4. **Wai Lana Productions, LLC**, Opposer's Licensee, 4721 KELTON WAY STE C SACRAMENTO CALIFORNIA 95838.

The above witnesses 1, 2, 3, and 4 can testify to information regarding use, intent to use, and licensing from Opposer.

5. **Bad Yogi LLC**, Applicant, 10422 La Mirage Court, Tampa, FLORIDA 33615.

Bad Yogi LLC can testify to information regarding its intent and use of the applied-for mark BAD YOGI.

II. A COPY—OR A DESCRIPTION BY CATEGORY AND LOCATION—OF ALL DOCUMENTS, ELECTRONICALLY STORED INFORMATION, AND TANGIBLE THINGS THAT THE DISCLOSING PARTY HAS IN ITS POSSESSION, CUSTODY, OR CONTROL AND MAY USE TO SUPPORT ITS CLAIMS OR DEFENSES, UNLESS THE USE WOULD BE SOLELY FOR IMPEACHMENT

The following documents are described by category and location:

1. **U.S. Trademark Registrations** as asserted in the Notice of Opposition: All such documents are of public record and/or equally available to Opposer.

i. Reg. No. 4412548 for the mark "LITTLE YOGIS" filed Jan. 10, 2003 is held by Wai Lana Productions, LLC for the benefit of Bibiji.

ii. Reg. No. 1980514 for "YOGI TEA" filed Sep. 26, 1994 for the goods described as "tea" is held by registrant East West Tea Company for the benefit of Bibiji as an at least 50% co-owner.

iii. Reg. No. 3595462 for "YOGIBOTANICALS" filed Apr. 19, 2007 is held by Yogi Botanicals International Corporation for the benefit of Bibiji.

iv. Reg. No. 3595461 for "YOGI BOTANICALS ORGANIC SOLUTIONS" filed Apr. 19, 2007 is held by Yogi Botanicals International Corporation for the benefit of Bibiji.

2. **U.S. Trademark Applications** as asserted in the Notice of Opposition: All such documents are of public record and/or equally available to Opposer.

i. Ser. No. 77871656 for "YOGI OIL" filed Nov. 12, 2009 is held by Yogi Botanicals International Corporation for the benefit of Bibiji.

ii. Ser. No. 77784202 for "YOGI NUT" filed Jul. 17, 2009 is held by Yogi Botanicals International Corporation for the benefit of Bibiji.

iii. Ser. No. 85942810 for the mark "YOGI" filed May 25, 2013 is held by Bibiji.

iv. Ser. No. 86137651 for the mark "YOGI" filed Dec. 06, 2013 is held by Bibiji.

III. A COMPUTATION OF EACH CATEGORY OF DAMAGES CLAIMED BY THE DISCLOSING PARTY—WHO MUST ALSO MAKE AVAILABLE FOR INSPECTION AND COPYING AS UNDER RULE 34 THE DOCUMENTS OR OTHER EVIDENTIARY MATERIAL, UNLESS PRIVILEGED OR PROTECTED FROM DISCLOSURE, ON WHICH EACH COMPUTATION IS BASED, INCLUDING MATERIALS BEARING ON THE NATURE AND EXTENT OF INJURIES SUFFERED

Damages according to proof in an amount to be determined;

Trademark filing fees;

Trademark prosecution attorneys' fees;

Attorneys' fees and costs incurred in the defense of this Opposition Proceeding in an amount to be determined;

IV. FOR INSPECTION AND COPYING AS UNDER RULE 34, ANY INSURANCE AGREEMENT UNDER WHICH AN INSURANCE BUSINESS MAY BE LIABLE TO SATISFY ALL OR PART OF A POSSIBLE JUDGMENT IN THE ACTION OR TO INDEMNIFY OR REIMBURSE FOR PAYMENTS MADE TO SATISFY THE JUDGMENT

None.

Dated: October 2, 2015

THE SONI LAW FIRM

/s/ Michael A. Long
Surjit P. Soni
Michael A. Long
Attorneys for Opposer,
BIBIJI INDERJIT KAUR PURI

CERTIFICATE OF SERVICE

I certify that I served the foregoing Opposer BIBIJI INDERJIT KAUR PURI's Rule 26(a)(1) Initial Disclosures to the attorney of record for Applicant as follows:

DAVID L LUIKART
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101 E KENNEDY BLVD SUITE 3700, PO BOX 2231
TAMPA, FL 33602-5195
Attorneys for Applicant, Bad Yogi LLC

By causing a full, true, and correct thereof to be sent by mailing in a sealed, first class postage prepaid envelope and deposited with the United States Postal Service.

Date: October 2, 2015

/s/ Cassandra Scardino
Cassandra Scardino