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

Proceeding	91225481
Party	Plaintiff Alfred Club, Inc.
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Submission	Motion for Discovery Sanctions
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Signature	/Judd D. Lauter/
Date	08/24/2016
Attachments	Alfred Club v. Alfred Inc. -- Motion for Sanctions.pdf(215919 bytes) Alfred Club -- Declaration of Judd Lauter ISO Motion for Sanctions.pdf(189879 bytes)

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

In the matter of application Serial No. 86/395,092
For the Trademark ALFRED (*stylized*)
Published in the Official Gazette on August 25, 2015

ALFRED CLUB, INC.,)	
)	
Opposer,)	
)	Opposition No. 91225481
v.)	
)	
ALFRED, INC.,)	
)	
Applicant.)	
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OPPOSER’S MOTION FOR SANCTIONS IN THE FORM OF JUDGMENT

Pursuant to Federal Rule of Civil Procedure 37(b)(2) and 37 CFR § 2.120(g)(1), Opposer Alfred Club, Inc. (“Alfred Club”) moves the Board to enter the sanction of judgment against Applicant Alfred, Inc. (“Applicant”) for its failure to comply with the Board’s recent order compelling discovery. The Board ordered Applicant to serve its Initial Disclosures and respond fully, without objections on the merits, to Alfred Club’s Requests for Production and Interrogatories. In continued abrogation of its obligations as an opposer in this proceeding, Applicant has neither served its Initial Disclosures nor its responses to Alfred Club’s outstanding discovery.

As set forth below and in the accompanying Declaration of Judd Lauter (“Lauter Decl.”), Applicant’s disregard of its discovery obligations and willful disregard of the Board’s order compelling discovery have left Alfred Club with no choice but to move for the entry of judgment in its favor.

I. PROCEDURAL AND FACTUAL BACKGROUND

As discussed more fully in Alfred Club’s Motion to Compel Discovery and For an Extension of Deadlines, Applicant did not serve either Initial Disclosures or responses to Alfred Club’s first sets of Requests for Production and Interrogatories. (Dkt No. 5.) As a result, Alfred Club was forced to file a Motion to Compel Discovery on June 7, 2016, which was granted. (*Id.*)

In the Board’s order dated July 13, 2016 (Dkt. No. 7, the “Order”), Applicant was given until August 12, 2016 to serve its Initial Disclosures and responses to Alfred Club’s interrogatories and requests for production. Following the Order, Alfred Club did not receive any communications from Applicant. (Lauter Decl. at ¶ 2.)

August 12, 2016 passed and Applicant had not complied with the Order. (*Id.*) In an email dated August 15, 2016, counsel for Alfred Club contacted Applicant’s counsel asking to schedule a telephone call to meet and confer on Applicant’s failure to comply with the Order. (*Id.* at ¶ 3.) On August 17, 2016, counsel for each party met and conferred by telephone. (*Id.* at ¶ 4.) During the call, Applicant’s counsel represented that his client was aware of the Order but that he had made no progress in obtaining information from his client necessary to comply with the Order—although “not for lack of effort” by his office. (*Id.*) Applicant’s counsel further represented that Applicant had given him no indication of whether it would *ever* serve Initial Disclosures or responses to Alfred Club’s interrogatories and requests for documents. (*Id.*) According to counsel, Applicant appeared to no longer be engaged in the process. (*Id.*)

II. ARGUMENT

“The law is clear that if a party fails to comply with an order of the Board relating to discovery, including an order compelling discovery, the Board may order appropriate sanctions as defined in Trademark Rule 2.120(g)(1) and Fed. R. Civ. P. 37(b)(2), including entry of

judgment.” *MHW, Ltd. and Pepsico, Inc. v. Simex, Aussenhandelsgesellschaft Savelsberg KG*, 59 USPQ2d 1477 (TTAB 2000). “[W]hile default judgment is sometimes considered a harsh remedy, it is justified ‘where no less drastic remedy would be effective and there is a strong showing of willful evasion.’” *Super Bakery Inc. v. Benedict*, 96 USPQ2d 1134 (TTAB 2010), quoting TBMP § 527.01(a).

A. No Lesser Remedy than Judgment Would Be Effective.

Sanctions lesser than the entry of judgment include: (1) striking all or part of the pleadings of the disobedient party; (2) refusing to allow the disobedient party to support or oppose designated claims or defenses; (3) drawing adverse inferences against the disobedient party; and (4) prohibiting the disobedient party from introducing designated evidence. Fed. R. Civ. P. 37(b)(2); 37 CFR § 2.120(g)(1). Such lesser sanctions would be ineffective when “[t]here is no reason to assume that, given additional opportunities, respondent will fulfill [its] obligations as a party to this proceeding.” *Super Bakery, Inc.*, 96 USPQ2d at 1136; *Patagonia, Inc. v. Azzolini*, 109 USPQ2d 1859 (TTAB 2014) (“any sanction short of judgment would be futile...due to respondent’s intransigence.”)

Applicant has given no indication that facilitating its continued participation in this proceeding would be anything short of futile. Alfred Club has spent significant effort trying to obtain Applicant’s cooperation in discovery, each time to no avail. (*See* Dkt. No. 5. *See also* Lauter Decl. at ¶¶ 2-4.) After successfully moving to compel, Alfred Club is as far from procuring responses to its document requests and interrogatories as when it first attempted to resolve these issues months ago. (*See* Lauter Decl. at ¶ 4.) Because neither Alfred Club’s efforts nor the Order have had any effect on Applicant’s conduct in this proceeding, Alfred Club respectfully submits that judgment in its favor is warranted.

B. Applicant Has Willfully Evaded Its Discovery Obligations.

Willful evasion of the Board's rules and orders is sufficient grounds for the sanction of judgment. *Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 USPQ2d 1848, 1854 (TTAB 2000) (terminating sanctions awarded when a party had "willfully failed to comply with the Board's [discovery] order... and ha[d] purposely avoided...[its] discovery responsibilities"). Further, "where there has been continuing avoidance of discovery, the Board will enter judgment against the disobedient party." *John Manville v. Laurence P. Czajkowski*, Cancellation No. 92044333 (TTAB May 24, 2006), *citing Unicut Corp. v. Unicut, Inc.*, 222 USPQ 341 (TTAB 1984).

Applicant has continually avoided its discovery obligations at every stage of this proceeding. (*See* Dkt. No. 5. *See also* Lauter Decl. at ¶¶ 2-4.) Applicant has refused to serve written responses to Alfred Club's discovery requests, let alone produce documents responsive to those requests. (Lauter Decl. at ¶ 2.) During Alfred Club's most recent meet and confer with Applicant's counsel, it was made clear that Applicant had not taken any steps to prepare the compelled discovery responses and that there was no indication that Applicant would. (*Id.* at ¶ 4.) Applicant has apparently opted not to participate in this proceeding, and any further delay of judgment would be a waste of time for both the Board and Alfred Club.

C. The Board Should Suspend the Proceeding Pending the Disposition of this Motion.

"When a party to a Board proceeding files a motion which is potentially dispositive of the proceeding...the case will be suspended by the Board with respect to all matters not germane to the motion." TBMP § 510.03(a). A motion for the sanction of judgment is a potentially

dispositive motion within the meaning of TBMP § 510.03(a). *See, e.g., Elec. Indus. Ass'n v. Potega*, 50 USPQ2d 1775, 1776 n. 4 (TTAB 1999). Accordingly, Alfred Club requests that the Board suspend this proceeding pending the disposition of this motion.

III. CONCLUSION

For the foregoing reasons, Alfred Club respectfully requests that the Board enter judgment sustaining Alfred Club's opposition to Applicant's application and further requests that the Board suspend the proceeding while it decides the instant motion.

Date: August 24, 2016

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Tel: (202) 842-7800

Counsel for Opposer Alfred Club, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **OPPOSER'S MOTION FOR SANCTIONS IN THE FORM OF JUDGMENT** has been served on Applicant Alfred, Inc. by mailing said copy on August 24, 2016, via First Class Mail, postage prepaid to Applicant's counsel of record:

Matthew H. Swyers
344 Maple Ave., West, Suite 151
Vienna, VA 22180-5612

An electronic courtesy copy has also been sent by email to Applicant's counsel email address at mswers@thetrademarkcompany.com.

Date: August 24, 2016

/Judd D. Lauter/

Judd D. Lauter

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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ALFRED, INC.,)	
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Applicant.)	
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**DECLARATION OF JUDD D. LAUTER IN SUPPORT OF
OPPOSER’S MOTION TO FOR SANCTIONS IN THE FORM OF JUDGMENT**

Judd D. Lauter, a U.S. citizen over the age of 18, hereby declares that:

1. I am an associate with the law firm Cooley LLP, counsel for Opposer Alfred Club, Inc. (“Opposer”) in connection with the above-captioned proceeding. I submit this declaration in support of Opposer’s Motion for Sanctions in the Form of Judgment. I make this declaration upon personal knowledge and, if called and sworn as a witness, I could and would testify as to the matters set forth herein.

2. Following the Board’s order dated July 13, 2016 (the “Order”), Opposer did not receive any communications from Applicant Alfred, Inc. (“Applicant”), nor did Opposer receive Applicant’s Initial Disclosures and responses to Opposer’s First Set of Requests for Production of Documents and Things, and First Set of Interrogatories. To date, Opposer has not received any of the outstanding discovery compelled by the Order.

3. In an email dated August 15, 2016 I contacted Applicant's counsel to schedule a meet and confer regarding Applicant's failure to comply with the Order.

4. On August 17, I met and conferred with Applicant's counsel by telephone. During the meet and confer, Applicant's counsel represented that Applicant was aware of the Order but that it had not provided him with the information necessary to prepare the Initial Disclosures and responses to Opposer's requests for documents and interrogatories. He advised that it was "not for a lack of effort" by his office. Applicant's counsel further represented that Applicant had given him no indication of if or when it would provide him with such information, and that his client did not appear to be engaged in maintaining the opposition proceeding.

I declare under penalty of perjury that the foregoing statements are true and correct.

Executed in Washington, D.C. this 24th day of August, 2016.

/Judd D. Lauter/
Janet L. Cullum
Judd D. Lauter
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Suite 700
Washington, D.C. 20004
Tel: (202) 842-7800

Counsel for Opposer Alfred Club, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **DECLARATION OF JUDD D. LAUTER IN SUPPORT OF OPPOSER'S MOTION FOR SANCTIONS IN THE FORM OF JUDGMENT** has been served on Applicant Alfred, Inc. by mailing said copy on August 24, 2016, via First Class Mail, postage prepaid to Applicant's counsel of record:

Matthew H. Swyers
344 Maple Ave., West, Suite 151
Vienna, VA 22180-5612

An electronic courtesy copy has also been sent by email to Applicant's counsel email address at mswyers@thetrademarkcompany.com.

Date: August 24, 2016

/Judd D. Lauter/

Judd D. Lauter