

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

JST

Mailed: March 31, 2003

Cancellation No. 92032513

Steven R. Hyken

v.

AST Sportswear, Inc.

Jyll S. Taylor, Attorney:

On August 8, 2002, the Board issued an order granting respondent's motion to compel and ordering petitioner to within thirty days thereof serve its responses to respondent's third set of interrogatories and third request for production of documents.

On September 3, 2002, petitioner filed a motion to suspend the proceeding. Because petitioner did not serve a copy thereof on counsel for respondent, on November 5, 2002, the Board allowed petitioner thirty days in which to effect service of the motion. The Board also indicated in its order that petitioner did not include the reason for the requested extension in the motion.

On September 11, 2002, respondent filed a motion for judgment as a discovery sanction under 2.120(g) for respondent's failure to serve discovery responses as required by the Board's August 8 order. Respondent also has

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indicated therein that petitioner forwarded to respondent's attorney a letter dated August 29, 2002, stating that he had requested suspension or delay of these proceedings from the Board. Respondent requests that suspension be denied, since petitioner failed to effect proper service under Trademark Rule 2.119 and because there is no good cause for the requested extension.

On December 16, 2002, respondent moved the Board to deny petitioner's motion to suspend and renewed its motion for judgment, arguing that petitioner failed to serve its motion to suspend (originally-filed September 3, 2002) as required by the Board in the November 5 order. Respondent included in its motion a copy of a letter from petitioner to respondent's attorney, dated November 23, 2002 and received by respondent's counsel on November 27, 2002. In the letter, petitioner again informs respondent that petitioner sent a letter to the Board requesting suspension of these proceedings and indicates that he responded to respondent's third set of interrogatories and production request the week of October 5, 2002.

As regards the motion to suspend, while petitioner did not fully grasp the procedural aspects of filing the requested suspension as set forth in Trademark Rule 2.119, or the Board's requirement to serve the September 3 motion to suspend on respondent, the Board nonetheless finds that

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petitioner has essentially complied with all service requirements. Moreover, it is clear that respondent was fully aware of the requested suspension, and the Board notes that the August 29, 2002 and November 23, 2002 letters to respondent are substantially the same in content as the motion to suspend received by the Board on September 3, 2002. As such, the Board finds that respondent has not been prejudiced by the non-receipt of the September 3 motion to suspend.¹ Indeed, respondent has opposed the motion, arguing that petitioner did not show good cause for the requested suspension.

While petitioner apparently sought additional time to comply with the August 8 order, as presumed by his subsequent apparent compliance therewith, petitioner did not show any cause for the requested suspension and it is accordingly denied.

Nonetheless, petitioner essentially complied with the service requirements, and further has indicated that petitioner has served his responses to respondent's third set of discovery requests. Notably, respondent did not reply to the contrary. In view thereof, petitioner's motion and renewed motion for judgment as a discovery (or other) sanction are moot and will be given no further consideration.

¹ A copy of the motion to extend is included with respondent's

Given petitioner's apparent trouble in fully grasping the procedural aspects of Board proceedings, the Board is compelled to reiterate that it is advisable that petitioner seek counsel in this matter. Having said that, and as indicated in the Board's November 5, 2002 order, Patent and Trademark Rule 10.14 permits any person to represent itself in a Board proceeding. If respondent does not retain counsel, then respondent will have to familiarize himself with the rules governing this proceeding. Strict compliance with the Trademark Rules and all other applicable rules is expected of all parties, even those representing themselves.

The Trademark Rules are codified in part two of Title 37 of the Code of Federal Regulations (also referred to as the CFR). There are other rules in part one of Title 37, relevant to filing of papers, meeting due dates, etc., that are also applicable to this case. The CFR and the Federal Rules of Civil Procedure, are likely to be found at most law libraries, and may be available at some public libraries. If applicant wishes to obtain a copy of Title 37 of the CFR, it may be ordered for a fee from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

One rule that respondent must pay particular attention to is Trademark Rule 2.119. That rule requires that a party

copy of this order.

filing any paper with the Board during the course of a proceeding must serve a copy on its adversary, unless the adversary is represented by counsel, in which case, the copy must be served on the adversary's counsel. With the paper that is filed with the Board, the party filing the paper must include "proof of service" of the copy. "Proof of service" usually consists of a signed, dated statement attesting to the following matters: (1) the nature of the paper being served, (2) the method of service (e.g., first class mail), (3) the person being served and the address used to effect service, and (4) the date of service.

Also, respondent should note that any paper it is required to file herein must be received by the Patent and Trademark Office by the due date, unless one of the filing procedures set forth in Patent and Trademark Rules 1.8 and 1.10 is utilized. These rules are in part one of Title 37 of the previously-discussed Code of Federal Regulations.

Discovery and trial dates are reset as indicated below:
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THE PERIOD FOR DISCOVERY TO CLOSE:	April 20, 2003
30-day testimony period for party in position of plaintiff to close:	July 19, 2003
30-day testimony period for party in position of defendant to close:	September 17, 2003
15-day rebuttal testimony period to close:	November 1, 2003

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In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Rule 2.125.

Briefs shall be filed in accordance with Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Rule 2.129.