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

Proceeding	92044330
Party	Defendant Hunter, Iluminada Patio Hunter, Iluminada Patio 10 Lavington Road Charleston, SC 29407
Correspondence Address	Christopher Chan Kilpatrick & Stockton 1100 Peachtree St Ste 2800 Atlanta, GA 30309-4530
Submission	Motion to Extend
Filer's Name	Christopher J. Chan
Filer's e-mail	cchan@kilpatrickstockton.com
Signature	/christopher j. chan/
Date	08/18/2006
Attachments	Charleston Child v. Hunter - Response to Petitioner_s Motion to Extend Scheduling Order.PDF (11 pages)(414378 bytes)

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

Charleston Child, LLC	)	
	)	
Petitioner,	)	
	)	
	)	Cancellation No. 92044330
v.	)	
	)	
ILUMINADA PATIO HUNTER and RONALD LEWIS HUNTER	)	
	)	
Respondents.	)	

RESPONSE TO PETITIONER'S MOTION TO EXTEND SCHEDULING ORDER

COME NOW, ILUMINADA PATIO HUNTER and RONALD LEWIS HUNTER ("the HUNTERS") and file this Response to Petitioner's Motion to Extend Scheduling Order ("Petitioner's Motion") in the above matter of Charleston Child, LLC v. Iluminada Patio Hunter and Ronald Lewis Hunter, Cancellation No. 92044330. The Respondents seek to dismiss the Petitioner's Motion, and request that the Petition to Cancel be dismissed with prejudice.

BACKGROUND

On March 4, 2005, the Petitioner filed its Petition to Cancel relating to Respondents' U.S. Trademark Registration 2,790,535 for "CHARLESTON CHILD." On March 18, 2005, the Trademark Trial and

Appeal Board (TTAB) mailed notice of the Petition to Cancel to the Respondents. An Order specifying the Discovery and Trial dates was also mailed to the parties on March 18, 2005 (hereinafter "March 18, 2005 TTAB Order"). Discovery was set to begin on April 7, 2005, and to close on October 4, 2005. See March 18, 2005 TTAB Order.

In April, 2005, Respondents contacted its counsel, Mr. Christopher J. Chan of Kilpatrick Stockton LLP, to assist in preparing an Answer in response to the Petition to Cancel. Respondents' counsel prepared and filed an Answer to Petition for Cancellation (the "Answer") on April 27, 2005. Respondents' counsel mailed a copy of the Answer to Petitioner's counsel in April 27, 2005. See Declaration of Christopher J. Chan dated August 18, 2006, ¶2, attached hereto as Exhibit A (hereinafter "Chan Declaration"). On July 7, 2005, the TTAB mailed Notice of Default to the Respondents. On Respondents filed their Motion for Cause to Set Aside the Notice of Default Against Respondents to show cause that the Notice of Default against the Respondents should be set aside. Counsel for the Respondents mailed a copy of its Motion for Cause to Set Aside the Notice of Default Against Respondents to Petitioner's counsel, Mr. Scott J. Fields of the National IP Rights Center, LLC. See Chan Declaration, ¶3. On September 1, 2005, the Notice of Default was vacated by the TTAB.

Respondents and their counsel obtained notice that the Notice of Default had been vacated. See Chan Delcaration, ¶4.

Since the filing of the Petition to Cancel, Petitioner and its counsel have not contacted the Respondents or Respondent's counsel regarding any discovery or settlement in this matter. See Chan Declaration, ¶5.

On June 30, 2006, the TTAB provided the Petitioner with thirty (30) days, up to and until July 30, 2006, to show cause why the TTAB should not treat its failure to file a brief as a concession of the case. Nine (9) days after the expiration of the July 30, 2006 deadline, Petitioner filed its Motion to Amend Scheduling Order requesting the matter be reopened and the parties be given an additional ninety (90) days to take discovery. Petitioner and its counsel did not contact the Respondents or Respondents' counsel regarding reopening the matter or consenting to any extension of time to take discovery in this matter. See Chan Declaration, ¶6,.

Respondents request the TTAB dismiss the Petitioner's Motion to Amend Scheduling Order as untimely, and further requests the TTAB to dismiss the Petition for Cancellation with prejudice.

ARGUMENT

I. Petitioner Failed to Timely Respond to the TTAB's June 30, 2006 Order

The Petitioner failed to timely respond to the TTAB's June 30, 2006 Order (hereinafter "TTAB Order"). The TTAB Order stated that "petitioner is allowed until thirty days from the mailing date [June 30, 2006] of this order to show cause why the Board should not treat its failure to file a brief as a concession of the case, failing which a judgment dismissing the petition for cancellation with prejudice will be entered against the petitioner." Thirty days after the mailing date of the TTAB Order, on July 30, 2006, the Petitioner had failed to respond to the TTAB Order. During the thirty days and even after the expiration of the July 30, 2006 deadline, neither Petitioner or its counsel attempted to contact Respondent or Respondent's counsel to discuss the matter, to seek a reopening of the matter, or to consent to extend discovery in the matter. See Chan Declaration, ¶6. Nine days after the July 30, 2006 deadline, Petitioner filed its untimely Motion to Amend Scheduling Order.

II. Petitioner Failed to Diligently Pursue Discovery in this Matter

As the party alleging grounds for cancellation of the Respondents' U.S. Trademark Registration, Petitioner has the responsibility to obtain

sufficient discovery to prove its case. The Petition to Cancel was filed on March 7, 2005, and an Order specifying the Discovery and Trial dates was mailed to the parties on March 18, 2005 (hereinafter "March 18, 2005 TTAB Order") Discovery was set to begin on April 7, 2005 and close on October 4, 2005. See March 18, 2005 TTAB Order. Respondents attempted to file their Answer on April 27, 2005, and served a copy of their Answer on Petitioner's counsel. See Motion for Cause to Set Aside the Notice of Default Against Respondents. At that time, Petitioner and its counsel should have known that Respondents intended to actively defend their U.S. Trademark Registration. However, at no time since the filing of the Petition to Cancel has Petitioner or its counsel ever contacted the Respondents or Respondents' counsel regarding taking any discovery in the matter. Furthermore, since there have been no settlement discussions between the parties to resolve the matter, Petitioner and its counsel have had no reason to delay taking discovery in the matter.

III. Petitioner Had Notice of Respondents' Objections to the Notice of Default

Petitioner and its counsel argue that they did not receive a copy of the Order reopening the case. However, the Petitioner and its counsel had notice that Respondents had filed an opposition to the Notice of Default

since Petitioner's counsel was served with a copy of Respondents' pleadings. See Chan Declaration, ¶3. Even though Petitioner and its counsel claim they lacked notice, Respondents and their counsel obtained notice that the case had been reopened. See Chan Declaration, ¶4. Despite the Petitioner's unfounded assertion, this and the lack of any discovery request from Respondents to Petitioner after the case was reopened should not be grounds for reopening the case, particularly in view of the Petitioner's and its counsel's neglect and lack of diligence in pursuing discovery in this matter.

CONCLUSION

For at least the reasons provided above, Respondents respectfully request that the TTAB dismiss the Petitioner's Motion to Amend Scheduling Order as untimely, and further dismiss the Petitioner's Petition for Cancellation with prejudice.

This 18th day of August, 2006.

Respectfully Submitted,

Anthony B. Askew
Christopher J. Chan

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(404) 815-6555 (fax)

Attorneys for Respondents

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

Charleston Child, LLC	)	
	)	
Petitioner,	)	
	)	
	)	Cancellation No. 92044330
v.	)	
	)	
ILUMINADA PATIO HUNTER and	)	
RONALD LEWIS HUNTER,	)	
Respondents.	)	

CERTIFICATE OF SERVICE

This is to certify that I have this day served a true and correct copy of the foregoing RESPONSE TO PETITIONER'S MOTION TO AMEND SCHEDULING ORDER on counsel for Petitioner by placing a true and correct copy of same in the First Class U.S. Mail with proper postage affixed and addressed to:

Scott J. Fields
National IP Rights Center, LLC
550 Township Line Road, Suite 400
Blue Bell, PA 19422

This 18th day of August, 2006.

Respectfully Submitted,

Christopher J. Chan
KILPATRICK STOCKTON LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309-4530
(404) 815-6500 (main)
(404) 815-6555 (fax)
Attorney for Respondents

EXHIBIT A

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

Charleston Child, LLC	)	
	)	
Petitioner,	)	
	)	
	)	Cancellation No. 92044330
v.	)	
	)	
ILUMINADA PATIO HUNTER and RONALD LEWIS HUNTER	)	
	)	
Respondents.	)	

DECLARATION OF CHRISTOPHER J. CHAN

1. I, Christopher J. Chan, am employed as an attorney by Kilpatrick Stockton LLP, located at 1100 Peachtree Street, N.E., Suite 2800, Atlanta, Georgia 30309-4530.

2. On April 27, 2005, I mailed a copy of the Answer to Petition for Cancellation to Petitioner's counsel, Mr. Scott J. Fields c/o National IP Rights Center, 550 Township Line Road, Suite 400, Blue Bell, PA 19422 .

3. On August 8, 2005, I mailed a copy Respondents' Motion for Cause to Set Aside the Notice of Default Against Respondents to Petitioner's counsel, Mr. Scott J. Fields c/o National IP Rights Center, 550 Township Line Road, Suite 400, Blue Bell, PA 19422.

4. After September 1, 2005, I obtained notice of the TTAB's September 1, 2005 Order vacating the Notice of Default against Respondents.

5. Since the filing of the Petition to Cancel, Petitioner and its counsel have not contacted the Respondents, me, or anyone at Kilpatrick Stockton LLP regarding any discovery or settlement in this matter .

6. After the June 30, 2006 TTAB Order was mailed, Petitioner and its counsel did not contact the Respondents, me, or anyone at Kilpatrick Stockton LLP regarding reopening the matter or consenting to any extension of time to take discovery in this matter.

Pursuant to and in accordance with 28 U.S.C. Section 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 18 day of August 2006.

Christopher J. Chan