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

Proceeding	92047661
Party	Defendant Saroj International, Inc.
Correspondence Address	GARY L. EASTMAN, APLC 401 WEST "A" STREET, SUITE 1785 SAN DIEGO, CA 92101 UNITED STATES garyeastman@sbcglobal.net
Submission	Motion to Dismiss 2.132
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Signature	/**Gary L. Eastman**/
Date	07/21/2010
Attachments	SAROJ_REQ_DEFAULT.pdf (10 pages)(228184 bytes)

TRADEMARK

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

LIVE VENTURES, INC.
Petitioner,

Adv.

SAROJ INTERNATIONAL, INC.
Registrant.

Registration No: 3143997
Registration No: 3147241
Registration No: 3158549

CANCELLATION NO: 92047661

REGISTRANT'S REQUEST FOR ENTRY OF DEFAULT

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, Virginia 22313-1451

CERTIFICATE OF MAILING

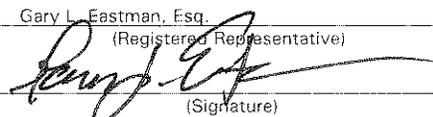
I hereby certify that this Motion is being transmitted electronically to TTAB c/o Assistant Commissioner for Trademarks, Trademark Trial and Appeals Board, P.O. Box 1451, Alexandria VA 22313-1451.

7-21-2010

(Mailing Date)

Gary L. Eastman, Esq.

(Registered Representative)



(Signature)

7-21-2010

(Date of Signature)

**REGISTRANT SAROJ INTERNATIONAL'S MOTION FOR DEFAULT
FOR PETITIONER'S FAILURE TO PROVE CASE**

Pursuant to 37 CFR § 2.132(a) and TBMP § 534, Registrant Saroj International, Inc. ("Registrant") hereby moves the Trademark Trial and Appeal Board (the "Board") for involuntary dismissal due to Petitioner Live Ventures, Inc.'s ("Petitioner") failure to prosecute the instant Cancellation. Registrant respectfully requests that the instant cancellation proceeding be dismissed with prejudice.

This Motion is made on the ground that Petitioner's time for taking testimony has expired and Petitioner did not take any testimony or offer any other evidence. The Board provided a Notice regarding Petitioner's default, providing a thirty (30) day period to respond. Petitioner failed to respond within the allotted timer period which expired on July 15, 2010. As such, Petitioner has failed to prove its case as a matter of law, and the instant cancellation should be dismissed with prejudice.

This Motion is supported by this Motion and the accompanying Memorandum, and the pleadings on file in this proceeding.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Despite initiating the instant cancellation and numerous actions involving discovery disputes, Petitioner has taken no substantive action in this cancellation proceeding. Petitioner did not take any testimony or offer any evidence during its testimony period. Because Petitioner's testimony period has now expired, Petitioner has failed to carry its burden of proof as a matter of law. Therefore, Registrant respectfully requests that the Board dismiss the instant Cancellation with prejudice.

II. PROCEDURAL BACKGROUND

A. The initial Registrations and Cancellation

Registrant filed and obtained the following Trademark Registrations:

Ser. No.	Filing Date	Reg. No.	Reg. Date	Mark
76632663	3/4/2005	3143997	9/19/2006	WWW.EAST13.COM
76632664	3/4/2005	3147241	9/26/2006	EAST 13
78762911	11/29/2005	3158549	10/17/2006	EAST THIRTEEN

On June 6, 2007, Petitioner filed a notice of Cancellation against the above-referenced Registrations. On July 25, 2007, Registrant filed its Answer. After a

series of motions before the Board, a Scheduling Order was issued resetting the time periods as follows:

Discovery Period to Close:	9/15/2009
Petitioner's 30 Day Testimony Period Close:	12/14/2009
Registrant's 30 Day Testimony Period to Close:	2/12/2010
15 Day Rebuttal Period to Close:	3/29/2010

These dates remain the operative dates in this proceeding.

B. Petitioner failed to take testimony, or offer evidence

Despite the Board's schedule of dates, Petitioner has failed to prosecute the case. In this regard, Petitioner did not take any testimony during its trial period or introduce any evidence. Consequently, Registrant now moves for judgment for Petitioner's failure to prove its case.

III. ANALYSIS

When a plaintiff in a cancellation proceeding fails to take testimony or offer evidence during its testimony period, the defendant may move for judgment pursuant to 37 CFR § 2.132(a). In this regard, 37 CFR § 2.132(a) states that

If the time for taking testimony by any party in the position of plaintiff has expired and that party has not taken testimony or offered any other evidence, any party in the position of defendant may, without waiving the right to offer evidence in the event the motion is denied, move for dismissal on the ground of the failure of the plaintiff to prosecute. The party in the position of plaintiff shall have fifteen days from the date of service of the motion to show cause why judgment should not be rendered against him. In the absence of a showing of good and sufficient cause, judgment may be rendered against the party in the position of plaintiff. If the motion is denied, testimony periods will be reset for the party in the position of defendant and for rebuttal.

The purpose of a motion under 37 CFR § 2.132(a) is to save the defendant the expense and delay of continuing with a trial where plaintiff has failed to offer any evidence during its testimony period. *Litton Business Systems, Inc. v. J.G. Furniture Co. Inc.*, 190 USPQ 428 (TTAB 1976); TBMP § 534.02. In such cases, the Board does not hesitate to enforce its procedural deadlines and is justified in

doing so. *Hewlett Packard Co. v. Olympus Corp.*, 931 F.2d 1551, 1554 (Fed. Cir. 1991); *Netcore Tech. v. Firstwave Tech.*, 2001 TTAB LEXIS 143, *6 (TTAB 2001) (“[c]lient and counsel share the duty to advance prosecution of the case”); *Gaudreau v. American Promotional Events, Inc.*, 2007 TTAB LEXIS 24, *16 (TTAB 2007) (“dismissal of this proceeding is appropriate under Trademark Rule 2.132 because opposers’ lack of evidence means that they cannot meet their burden of proof as plaintiff in this case”); *Atlanta-Fulton County Zoo, Inc. v. DePalma*, 1998 TTAB LEXIS 9, *9–10 (TTAB 1998); *Azor, Inc. v. Novell, Inc.*, 1996 TTAB LEXIS 452, *3–4 (TTAB 1996) (“we cannot overlook opposer’s total disregard of its procedural responsibilities in this case”) (nonprecedential).

Furthermore, in order for a plaintiff to request that its testimony period be reopened, the plaintiff must show good and sufficient cause. *HKG Indus. v. Perma Pipe, Inc.*, 1998 TTAB LEXIS 399, *1–2 (TTAB 1998). This standard is equivalent to the excusable neglect standard. *Id.* The “good and sufficient cause” standard, in the context of this rule, is equivalent to the “excusable neglect” standard which would have to be met by any motion under Fed. R. Civ. P. 6(b) to reopen the plaintiff's testimony period. See *Grobet File Co. of America Inc. v. Associated Distributors Inc.*, 12 USPQ2d 1649 (TTAB 1989); *Fort Howard Paper Co. v. Kimberly-Clark Corp.*, 216 USPQ 617 (TTAB 1982). The Federal Circuit and the Board have defined “excusable neglect” as:

the failure to take the proper steps at the proper time, not in consequence of the party's own carelessness, inattention, or willful disregard of the process of the court, but in consequence of some unexpected or unavoidable hindrance or accident

Hewlett Packard Co., 931 F.2d at 1552–53. In other words, plaintiff's carelessness, inattention, or willful disregard of dates does not suffice. *See e.g.*, *Hewlett Packard Co.*, 931 F.2d 1551 (Fed. Cir. 1991) (affirming Board's denial to reopen based on the parties' prior settlement negotiations); *HKG Indus.*, 1998 TTAB LEXIS 399 (denying request to reopen testimony period despite death of plaintiff's counsel); *Netcore Tech.*, 2001 TTAB LEXIS at * 6 (belated withdrawal of attorney does not constitute excusable neglect).

In the instant case, Petitioner has ignored the Board's schedule and failed to put on a case. In this regard, Petitioner failed to take any testimony during its trial period or introduce any evidence. The Board, sua sponte, issued an Order on June 15, 2010, providing a thirty (30) day period for Petitioner to show cause why its opening Brief was not filed. The thirty (30) day period has long passed, and Petitioner filed nothing. Petitioner's testimony period has expired, and Petitioner will not be able to introduce any evidence to support its claims. Petitioner has not responded, and has certainly not shown that its neglect of the deadline was

excusable. See *PolyJohn Enterprises Corp. v. 1-800-Toilets Inc.*, 61 USPQ2d 1860, 1862 (TTAB 2002) (Board is justified in enforcing procedural deadlines). As a result, Registrant is entitled to judgment, and the instant cancellation should be dismissed with prejudice.

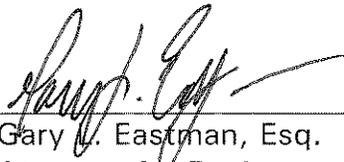
Moreover, Registrant's motion for judgment should be granted because Petitioner will not be able to show good and sufficient case for its failure to put on a case. Petitioner's neglect does not stem from any unexpected or unavoidable hindrance or accident. Rather, Petitioner has simply chosen not to participate in this case. This does not constitute good cause or excusable neglect.

IV. CONCLUSION

For all the foregoing reasons, Registrant respectfully requests that the Board grant this motion for Entry of Default Judgment and dismiss the instant Cancellation with prejudice.

Dated: July 21, 2010

By: _____


Gary W. Eastman, Esq.
Attorney for Registrant Saroj International, Inc.
Registration No. 41,005

TRADEMARK

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

LIVE VENTURES, INC.
Petitioner,

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SAROJ INTERNATIONAL, INC.
Registrant.

CANCELLATION NO: 92047661

Registration No: 3143997

Registration No: 3147241

Registration No: 3158549

REGISTRANT SAROJ INTERNATIONAL, INC.'S
PROOF OF SERVICE

PROOF OF SERVICE

I am a citizen of the United States and a member of the Bar of California. I am over the age of eighteen years, and not a party to this action. I am a resident of this State, and have an office located at 401 W. A Street, Suite 1785, San Diego, California 92101.

On July 21, 2010, I served the following:

REGISTRANT'S REQUEST FOR ENTRY OF DEFAULT

On the person stated below by following means of service:

Registrant Saroj International's Certificate of Service

NORBERT STAHL
STAHL LAW FIRM
2 MEADOWSWEET LAND
SAN CARLOS, CA 94070

By placing the documents listed above in a sealed envelope with postage thereon fully prepaid in the United States Mail in San Diego, California addressed as set forth above.

I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party serviced, services is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mail stated in the affidavit.

I declare under the penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 21, 2010, at San Diego, California.

Dated: 7-21, 2010

By: 

Gary V. Eastman, Esq.
Attorney for Registrant Saroj International, Inc.
Registration No. 41,005