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

Proceeding	92048271
Party	Plaintiff Rhino Linings USA, Inc.
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Submission	Motion for Sanctions
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Date	10/06/2008
Attachments	RhinoMotion.pdf (3 pages)(120074 bytes)

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

In the Matter of Registration No. 1,698,407
Date of Issue: June 30, 1992

RHINO LININGS USA, INC.,)	
Petitioner,)	
)	
vs.)	Cancellation No. 92048271
)	
RAPID RACK INDUSTRIES, INC.,)	
Applicant.)	
)	

PETITIONER'S SECOND MOTION FOR SANCTIONS

NOW COMES Petitioner Rhino Linings USA, Inc. ("Petitioner"), by and through its undersigned counsel, pursuant to Rule 37 of the Federal Rules of Civil Procedure and Chapter 411 of the TBMP, and respectfully moves the Board for an Order entering a default judgment as a sanction against Registrant Rapid Rack Industries, Inc. ("Rapid Rack") for its willful refusal to appear and testify with respect to topics properly designated in Petitioner's Rule 30(b)(6) Notice of Deposition for Rapid Rack, after the failure to respond substantively to Petitioner's written discovery requests. Counsel for Petitioner attempted in good faith to resolve the issue without bringing the present motion, but was unable to convince Rapid Rack to comply with Rule 30 of the Federal Rules of Civil Procedure and TBMP § 404.05.

In addition or in the alternative, Petitioner seeks other appropriate sanctions as set forth in Rule 37(b)(2)(A) and TBMP § 411.04 for Rapid Rack's discovery misconduct, including (1) ordering that Rapid Rack be precluded from presenting any evidence with respect to those

topics set forth in the 30(b)(6) Notice of Deposition of Rapid Rack; (2) prohibiting Rapid Rack from opposing Petitioner's claims against Rapid Rack for abandonment of a trademark and for fraud on the Trademark Office; and/or (3) striking Rapid Rack's Answer (Doc. No. 4), Motion for Stay of Proceedings (Doc. No. 11), and Motion for Extension of Time (Doc. No. 13). In support of this relief, Petitioner refers to and incorporates herein by reference the facts, arguments, and authorities set forth in its Brief in Support of Second Motion for Sanctions, filed contemporaneously herewith.

WHEREFORE, Petitioner Rhino Linings USA, Inc. respectfully prays that the Board sanction Rapid Rack, as requested herein, for Rapid Rack's willful failure to comply with its discovery obligations and grant Petitioner such other and further relief as the Board deems just, necessary, and proper.

Respectfully submitted this 6th day of October, 2008.

NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

By: /Joseph S. Dowdy/
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CERTIFICATE OF SERVICE

I hereby certify that on this day a true and correct copy of the foregoing document has been served this day by depositing a true copy thereof in a depository under the exclusive care and custody of the United States Postal Service in a first class postage prepaid envelope and properly addressed as follows:

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This the 6th day of October, 2008.

NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

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