

ESTTA Tracking number: **ESTTA656149**

Filing date: **02/16/2015**

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

Proceeding	92052901
Party	Defendant Wala Industries, Inc.
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Date	02/16/2015
Attachments	WalaBrief&MotionSigned001.pdf(108712 bytes )

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

Whataburger Partnership LP )  
 )  
                                   Petitioner, )  
 )  
                                   v. )  
 )  
 Wala Industries, Inc. )  
 )  
                                   Registrant. )  
 \_\_\_\_\_ )

**CANCELLATION NO. 92052901  
REGISTRATION NO. 2842218  
MARK: WHAT A LOT A PIZZA**

**DEFENDANT'S BRIEF AND MOTION FOR JUDGMENT**

Pursuant to Rule 2.132(a) of the Trademark Rules of Practice, 37 C.F.R. §2.132(a), Defendant and Registrant Wala Industries, Inc., ("Defendant"), through Counsel, moves for judgment on the grounds that Whataburger Partnership LP ("Plaintiff") has failed to introduce any transcript of testimony in this matter, and has failed to introduce any evidence in support of its Petition to Cancel Defendant's Registration No. 2842218.

On August 17, 2010 Plaintiff filed its Petition for Cancellation No. 92052901 against Plaintiff's Registration No. 2842218. On October 26, 2010, Registrant filed its Answer, Affirmative Defenses and Motion to Dismiss the Petition. Following several stipulated extensions of time, the Board set on November 21, 2014, a Case Schedule which stated a January 17, 2015 due date for Plaintiff's Brief and a February 17, 2015 due date for Defendant's Brief.

Plaintiff has not filed a Plaintiff's Brief, a copy of any transcript of testimony, or any documentary exhibits, and has failed to introduce any evidence or present any testimony during its assigned testimony period.

Rule 2.132(a) states that a party may obtain an involuntary dismissal for failure of the party in the position of plaintiff to take any testimony or offer any other evidence. In this case, Plaintiff has not taken any testimony or filed a Plaintiff's Brief by the required due date of January 17, 2015. Therefore it is appropriate that the Registrant now move for judgment under Rule 2.132(a). See Hewlett-Packard Co. v. Olympus Corp., 18 USPQ 2d 1710 (Fed Cir. 1991); Hartwell Co. v. Shane, 17 USPQ2d 1569, at fn 4 (TTAB 1990); Hester Industries, Inc. v. Tyson Foods Inc., 2 USPQ2d 1646 (TTAB 1987); and Loren Cook Co. v. Acme Engineering and Manufacturing Corp., 216 USPQ 517 (TTAB 1982).

Because the Plaintiff has failed to prosecute its case, the Defendant should not, consistent with the purpose of Rule 2.132(a), endure the expense and delay of continuing with a trial in a case where the Plaintiff has failed to offer any evidence during its testimony period. See Litton Business Systems, Inc. v. J.G. Furniture Co., 190 USPQ 431 (TTAB 1976). Wherefore, since the Plaintiff has shown no right to relief and presented no record evidence establishing its case, Defendant hereby moves for Judgment for Defendant under 37 C.F.R. § 2.132(a)

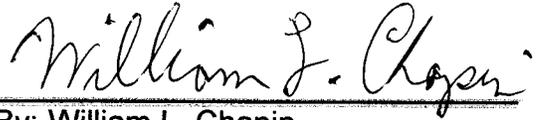
Respectfully submitted,

Dated: February 16, 2015

  
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**CERTIFICATE OF MAILING**

I hereby certify that this pleading is being filed electronically through on-line TTAB filing systems, ESTTA on February 16, 2015.



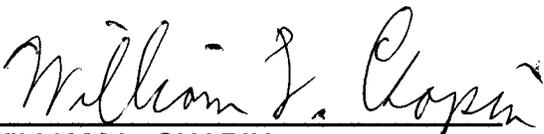
By: William L. Chapin

**CERTIFICATE OF SERVICE**

I hereby certify that, on this date, I served the foregoing PLEADING upon counsel for Petitioner by causing a copy thereof to be deposited in the United States Mail, first class postage prepaid and addressed as follows:

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The 16<sup>th</sup> day of February, 2015  
Newport Beach, California

  
WILLIAM L. CHAPIN