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Filing date: **10/21/2013**

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

| | |
|------------------------|---|
| Proceeding | 92053298 |
| Party | Plaintiff Tyler Perry Studios, LLC |
| Correspondence Address | VICTOR K SAPPHERE CONNOLLY BOVE LODGE HUTZ LLP 333 S GRAND AVENUE, SUITE 2300 LOS ANGELES, CA 90071 UNITED STATES |
| Submission | Motion to Extend |
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| Signature | /victorsapphire/ |
| Date | 10/21/2013 |
| Attachments | KEARNEY RESPONSE 2D EXTENSION.pdf(85843 bytes) |

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

In the matter of Trademark Registration No. 3,748,123
Mark: WHAT WOULD JESUS DO
Registration date: February 16, 2010

| | | |
|--------------------------|---|---------------------------|
| Tyler Perry Studios, LLC | : | |
| | : | |
| Petitioner, | : | |
| | : | |
| v. | : | Cancellation No. 92053298 |
| | : | |
| Kimberly Kearney | : | |
| | : | |
| Respondent. | : | |

**OPPOSITION TO RESPONDENT’S SECOND MOTION
TO EXTEND TIME OR SUSPEND PROCEEDINGS**

After waiting more than ten days after the Board’s September 23, 2013 ruling on her previous unconsented Motion for Extension of Time for Defendant’s Trial Period, in which the Board generously granted until October 19, 2013 for the Registrant to complete her testimony period, Registrant has filed what appears to be a nearly identical Motion for Extension and/or Suspension of Trial Proceedings. This second Motion is vexatious because it deliberately wastes the Board’s time and Petitioner’s resources forcing a response. Because the Motion presents no additional facts, law, or other matter giving rise for the sought extension than was already presented in the Motion giving rise to the extended period during which Registrant hastily filed this repetitive Motion, it should be denied and the Trial Dates held as they were Ordered on September 23, 2013.

REGISTRANT’S CONDUCT IS NOT EXCUSABLE NEGLIGENCE AND HER LACK OF DILIGENCE IS NOT FOR GOOD CAUSE

In its September 23 Order, the Board admonished Registrant, who has long relied on her status as a purportedly pro se party, that “[R]espondent should have been cognizant of what evidence she would need to defend this cancellation proceeding and how she would obtain that evidence long before trial. The Board expects all parties appearing before it, whether or not they are represented by counsel, to comply with applicable rules.” Sept. 23 Order at 4. Additionally, the Board informed Registrant that “respondent must secure the attendance of ... witness[es] by subpoena issued, ..., from the United States district court in the federal judicial district where the witness resides or is regularly employed.” *Id.*

Rather than moving forward with her planned subpoenas, Registrant instead idled for nearly two weeks. She claims that this latest Motion’s proposed delay in the proceedings is because it “has just been brought to [her] attention” that she must use the Georgia courts to issue her subpoenas of Georgia residents. However, the Order of **10 days before** clearly states the same fact! Registrant’s excuse would be embarrassing if it were not so vexatiously calculated to further extend the proceedings so that by the additional cost to Petitioner to oppose the Motion, as well as the annoyance caused by this abuse of process, Registrant might extract a long sought-after nuisance payment.

The deceit in the Motion is laid bare by her statement that she is “prepared to move forward to file such actions to initiate the steps” to obtain subpoenas against her proposed witnesses: she has done no such thing in the weeks since the instant Motion was filed. In the absence of any effort to move the proceedings forward, much less any

evidence that Registrant is not merely wasting the Board's time with this cumulative and vexatious extension-motion practice, the instant Motion should be denied and no further extensions of time or suspension granted.

**REGISTRANT HAS DONE NOTHING IN HER TESTIMONY PERIOD
BECAUSE THERE IS NO EVIDENCE OF USE BEYOND THE FRAUDULENT
SPECIMEN OF USE FILED IN SUPPORT OF THE REGISTRATION**

Apart from the apparent lack of energy applied to the issuance of subpoenas by Registrant, it is now clear as of the date of this filing that she has conclusively done nothing in her entire testimony period. Registrant has filed no evidence of any nature in the instant proceedings. She has held onto the obviously preposterous idea that somehow, the Petitioner's principal is the one and only person with the ability to provide any and all evidence of her own use of the subject mark of the registration that would save the registration from cancellation. Meanwhile, however, she has presented no evidence via Notice of Reliance or otherwise that counters any of the facts alleged by Petitioner in the Petition, or as admitted in her deemed-admitted Admissions. This is not without reason.

As Petitioner has demonstrated for years now in exhibits to the various Motions and Oppositions before the Board in these proceedings, Registrant used a bogus, fraudulent web page in support of her Amendment to Allege Use in the subject Registration. The web page contains no telephone numbers, and the email addresses thereon have never done more than point to a web development tutorial's non-working "example.com" email address. The web page has gone years without even being updated from its non-functional state, and has obviously never been used for more than fraudulently obtaining a federal trademark registration.

The Registrant, through her failure to file any evidence supporting her position that the mark is in good standing and in use, concedes the Petitioner's position, namely, that the mark is not in use and has never been used in commerce in connection with the services identified in the registration. Moreover, Registrant has presented no copies of correspondence between herself and Petitioner or Petitioner's principal, Mr. Perry, that would support her position that he has any knowledge of the facts affecting her registration's standing. She has not even shown that she ever sought to arrange, much less arranged, a meeting with Mr. Perry or anyone from Petitioner. These facts militate against her claim of good-faith standing to seek further extension. She has presented – and indeed cannot present – any counter-facts to support her position.

Additionally, Registrant did not, because she cannot, even submit basic evidence of use of the mark in connection with the identified entertainment services: there are no DVD's of a produced television show, no correspondence with broadcaster(s) concerning the show's production, distribution and exhibition, or other correspondence or documentation supporting a finding that the mark is in use. Significantly, Registrant's production is not listed in the exhaustive online database of film and television, the "Internet Movie Database" (www.imdb.com). The Registrant has an entry listing her film and television work but it conspicuously fails to include WHAT WOULD JESUS DO; there is no such title identified with Registrant in any capacity in the database.

Sapphire Decl., Exhibit A.

REGISTRANT’S MELODRAMATIC HYPERBOLE IN PLEADING UNDULY HARASSES AND PREJUDICES PETITIONER, WHILE RENDERING THE LEGAL POINT OF HER PLEADINGS INSCRUTABLE

Registrant’s continued use of these proceedings as a platform through which to harangue Petitioner’s principal Mr. Perry is unprecedented. It’s having been allowed to continue this long by the Board is disappointing, as it is so obviously designed to prejudice Mr. Perry and his company before the Board in these proceedings and subject him and his company to public opprobrium. Petitioner respectfully requests that the instant Motion be denied and struck from the record.

CONCLUSION

Because she has taken no further action since filing the Motion and will likely wait another few weeks before finding another excuse to seek extension of her inaction, Registrant’s untimely and inappropriate request for an extension of time “until [she] can secure the subpoenas” she seeks should be denied and no further extensions granted in any event. The Board should not reward such obvious conduct intended to exact a nuisance settlement payment.

Petitioner respectfully requests the Motion be denied.

Respectfully submitted,
TYLER PERRY STUDIOS, LLC

Dated October 21, 2013

/s/
Victor K. Sapphire
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213 787 2523

CERTIFICATE OF SERVICE

I hereby certify that on this 21th day of October 2013 true and correct copies of the OPPOSER'S OPPOSITION TO REGISTRANT'S MOTION FOR EXTENSION OF TIME were served on Respondent Kimberly Kearney, Hollywood South LLC, 17216 Saticoy Street, Suite 235, Van Nuys, California 91406, via first class mail.

/s/

Victor K. Sapphire