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

Proceeding	92054496
Party	Plaintiff Hat World, Inc.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re the Matter of:
Registration No.: 3,016,764
Mark: PASS THE ROC
Filed: December 13, 2003
Registered: November 22, 2005

Hat World, Inc.,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92054496
)	
Pass The Roc Athletics, Inc.,)	
)	
Registrant)	

**REPLY TO REGISTRANT’S OPPOSITION TO PETITIONER’S MOTION FOR
SANCTIONS IN FORM OF ENTRY OF JUDGMENT**

Pursuant to Trademark Rule 2.127(a) and Trademark Trial and Appeal Board Manual § 5.02(b), Petitioner Hat World, Inc. (“Petitioner”), through counsel, respectfully files this Reply Brief to clarify the record with regard to statements made by Registrant Pass the Roc Athletics, Inc. (“Registrant”) in its Opposition to Petitioner’s Motion, filed March 13, 2014, and mailed to Petitioner on or around March 13, 2014.¹

Registrant mailed discovery responses and Initial Disclosures, all signed by Registrant’s counsel, on or around March 6, 2014, two months after the Board-Ordered deadline and almost

¹ Registrant’s counsel failed to include a certificate of service with her Opposition Motion, the Declarations in support thereof, Registrant’s Initial Disclosures, Registrant’s Responses to Petitioner’s First Set of Requests for Documents and Things, Registrant’s Responses to Petitioner’s First Set of Interrogatories, Registrant’s First Set of Requests for Documents and Things, or Registrant First Set of Interrogatories.

fourteen months after discovery and Initial Disclosures were served by Petitioner. Registrant's violation of the Order, combined with its flagrant disregard for Trademark Trial and Appeal Board rules and procedures, is demonstrative of its persistent pattern of dilatory and abusive tactics throughout this proceeding, including an apparent inability to meet essentially all proceeding deadlines, both Board-Ordered and other. This behavior mandates sanctions in the form of entry of judgment cancelling the registration.

As noted above, Registrant responded to discovery requests, first served on January 17, **2013**, on or around March 6, **2014**. These Responses, mailed without a certificate of service and signed by counsel, not Registrant, are grossly inadequate. They represent the minimum Registrant thought would satisfy the discovery requests, and are clearly not fully responsive. Further, like its Section 8 Affidavit filed in 2012, these discovery responses were allegedly prepared by Defendant Pass the Roc Athletics, Inc., despite the fact that this corporation ceased to exist in 2005.

As admitted by Registrant in its Opposition to Petitioner's Motion for Sanctions in the Form of Entry of Judgment, Registrant "was out of compliance with the Board's December 6, 2013 Order" when it responded to Petitioner's discovery requests on March 6, 2014, more than one year after these requests were served and two months after the Board ordered Registrant to serve discovery responses. What Registrant has not discussed is the fact that it is not able to demonstrate that the failure to timely serve discovery responses, or take part in this proceeding in general, is excusable neglect. Registrant's counsel argues that Petitioner has not demonstrated that it has been prejudiced, or that an intolerable burden has been placed on the Board due to the delay. However, this is not the standard. Rather, in determining whether there has been excusable neglect, the Board follows the test set forth by the U.S. Supreme Court in *Pioneer*

Investment Services Company v. Brunswick Associates Ltd. Partnership, 507 U.S. 380 (1993), adopted by the Board in *Pumpkin Ltd. v. The Seed Corps*, 43 USPQ2d 1582 (TTAB 1997). The test includes the following four factors:

- 1) the danger of prejudice to the nonmovant,
- 2) the length of the delay and its potential impact on judicial proceedings,
- 3) the reason for the delay, including whether it was within the reasonable control of the movant, and
- 4) whether the movant acted in good faith.

Under the test set forth by the Supreme Court, three of the four factors clearly favor Petitioner.

- Factor 2: the Petition to Cancel was filed August 4, 2011, yet discovery responses have only been served within the last few weeks. In addition to being late, and two months after the deadline set by the Board, the responses appear both insufficient and incomplete.
- Factor 3: Registrant offers no legitimate excuses for the extreme delay in forwarding discovery responses. Registrant's CEO claims he was sick and at times homeless, but a review of the medical records he submitted shows the alleged illness occurred after the January 5, 2014 deadline set by the Board for Defendant to serve initial disclosures and discovery responses.
- Factor 4: A review of the case history submitted in Petitioner's Motion for Entry of Judgment can only be interpreted to show bad faith on the part of Registrant. It has been given numerous opportunities to take part in this cancellation proceeding, but has missed essentially every deadline. Further, the fact that Registrant continues to act as Pass the Roc Athletics Inc., a corporation that has not existed for almost ten years, does not show good faith or proper conduct on the part of Registrant.

A balancing of these factors clearly shows that Registrant cannot make a showing of excusable neglect – his actions appear both willful and designed to waste the time and resources of both the Board and of Petitioner. Therefore, Registrant has presented no argument against Petitioner's request that judgment be entered in its favor.

As noted in Petitioner's Motion for Entry of Judgment, Registrant has acted consistently throughout this proceeding, in an effort to maintain the proceeding without actively participating therein.

Petitioner has acted in accord with the Board's indication in its Order dated December 6, 2013, in which the Board advised Petitioner that filing a motion for sanctions in the form of an entry of judgment in favor of Petitioner would be the appropriate course of action under the present circumstances. For the foregoing reasons, and all of the reasons in Petitioner's Motion for Entry of Judgment, and all of the reasons set forth in the Board's earlier Orders in which it has repeatedly warned Registrant of the consequences of its behavior in connection with these proceedings, Registrant should be sanctioned by entry of judgment sustaining the Petition and cancelling U.S. Trademark Registration No. 3,016,764.

Dated: April 1, 2014

Respectfully submitted,

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