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

Proceeding	92059305
Party	Defendant Theodore A Stoner
Correspondence Address	MATTHEW H SWYERS THE TRADEMARK COMPANY PLLC 344 MAPLE AVE W, STE 151 VIENNA, VA 22180 UNITED STATES mswyers@TheTrademarkCompany.com
Submission	Motion to Dismiss 2.132
Filer's Name	Matthew H. Swyers, Esq.
Filer's e-mail	mswyers@thetrademarkcompany.com
Signature	/Matthew H. Swyers/
Date	07/19/2016
Attachments	Motion for Judgment.pdf(283772 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board**

In the matter of U.S. Registration 3,700,403
For the mark BONGO BI-LINGO BUDDY
Registered on the Principal Register on October 20, 2009

MWR Holdings, LLC,	:	
	:	
Petitioner,	:	
	:	
vs.	:	Cancellation No. 92059305
	:	
Stoner, Theodore A.,	:	
	:	
Registrant.	:	

MOTION FOR JUDGMENT

COMES NOW the Registrant, Theodore A. Stoner (hereinafter “Registrant”), by and through counsel, The Trademark Company, PLLC, and files the instant Motion for Judgment pursuant to 37 C.F.R. § 2.132(a). In support of said motion Registrant provides as follows:

STATEMENT OF THE CASE

1. On or about February 10, 2006 Registrant filed the Intent-to-Use Federal Trademark Application for Registrant’s Mark in connection with “Entertainment in the nature of live theatrical performances by mixed media of live characters, puppetry and animation for children; Organizing cultural events for children; Education services, namely, providing professional training in the field of bilingual learning” in International Class 41 (hereinafter “Registrant’s goods”).

2. Registrant’s Mark was assigned Serial No. 78/812,529.
3. On or about January 1, 2008 Registrant’s Mark was published for opposition.
4. On or about March 25, 2008 Registrant’s Mark received a Notice of Allowance.

5. On or about September 1, 2009 Registrant filed Registrant's Statement of Use claiming a date of first use of June 8, 2004 and a date of first use in commerce of June 18, 2008.
6. On or about September 17, 2009 the USPTO notified Registrant that the Statement of Use had been accepted.
7. On or about October 20, 2009 Registrant's Mark was registered on the principal register.
8. Registrant's Mark was assigned Registration No. 3,700,403.
9. On June 5, 2014 MWR Holdings, LLC ("Petitioner") instituted the instant proceeding against Registrant's Mark.
10. On July 14, 2014 Registrant, through counsel, filed Registrant's Answer and Grounds of Defense to the allegations contained in the Petition to Cancel.
11. On or about April 16, 2015 Petitioner filed a Motion for Leave to Amend its Petition to Cancel.
12. On or about May 21, 2015 the Board accepted Petitioner's Amended Petition to Cancel and resetting the trial schedule.
13. On June 29, 2015 Registrant, through counsel, filed Registrant's Answer and Grounds of Defense to the allegations contained in the Amended Petition to Cancel.
14. On or about August 12, 2015 Petitioner filed a Motion for Summary Judgment and Memorandum of Law in Support Thereof.
15. On September 16, 2015 Registrant filed Registrant's Opposition to Petitioner's Motion for Summary Judgment and Registrant's Counter-Motion for Summary Judgment.
16. On or about October 6, 2015 Petitioner filed Petitioner's Further Reply in Support of its Motion for Summary Judgment.

17. On or about October 21, 2015 Petitioner filed Petitioner's Opposition to Stoner's Cross-Motion for Summary Judgment.

18. On or about November 10, 2015 Registrant filed a Reply in Support of Registrant's Counter-Motion for Summary Judgment.

19. On or about November 17, 2015 Petitioner filed a Motion to Strike certain portions of Registrant's Reply in Support of its Counter-Motion for Summary Judgment.

20. On December 7, 2015 Registrant filed an Opposition to Petitioner's Motion to Strike.

21. On or about December 23, 2015 Petitioner filed Petitioner's Reply in Support of Petitioner's Motion to Strike.

22. On or about March 25, 2016 the Board entered an order that Petitioner's Motion for Summary Judgment was moot as to insufficient fraud claim and denying both Petitioner's other claims in Petitioner's Motion for Summary Judgment and Registrant's Counter-Motion for Summary Judgment. Further the Board set out a new scheduling allowing Petitioner ten days to amend Petitioner's Petition to Cancel and Registrant ten days from the date of service of any Amended Petition to Cancel to answer the same.

23. On or about April 4, 2016 filed Petitioner's Second Amended Petition to Cancel.

24. The deadline to answer the Petitioner's Second Amended Petition to Cancel was April 14, 2016.

25. Registrant inadvertently failed to timely file its Answer and Grounds of Defense.

26. On April 19, 2016 Registrant filed a Motion to Accept Registrant's Late-File Answer.

27. On or about June 1, 2016 the Board entered an Order accepting Registrant's motion and notifying the parties that the proceeding schedule will remain as set forth in the Board's order dated March 25, 2016.

28. Per the Board's order dated March 25, 2016, on or about May 21, 2016 Petitioner's 30-day trial period opened. On June 20, 2016 Petitioner's 30-day trial period closed. During its trial period Petitioner failed to submit even one scintilla of evidence in support of the instant Petition to Cancel.

ARGUMENT

A Registrant in the position of a defendant may appropriately file a motion for judgment directed to the sufficiency of the trial evidence of a Petitioner in the position of a plaintiff where the plaintiff / Petitioner's testimony period has passed and the plaintiff / Petitioner has not taken testimony or offered any evidence to support its case. 37 CFR § 2.132(a) In such a situation, the defendant / Registrant may, without waiving its right to offer evidence in the event the motion is denied, move for dismissal for failure of the plaintiff / Petitioner to prosecute. *See generally Hewlett-Packard Co. v. Olympus Corp.*, 931 F.2d 1551, 18 USPQ2d 1710, 1712 (Fed. Cir. 1991) (Board did not abuse discretion in denying motion to reopen testimony and dismissing proceeding on motion to dismiss where plaintiff submitted no evidence and failed to make a prima facie case); *Procyon Pharmaceuticals Inc. v. Procyon Biopharma Inc.*, 61 USPQ2d 1542, 1544 (TTAB 2001) (motion to extend testimony period denied; motion to dismiss granted); *SFW Licensing Corp. and Shoppers Food Warehouse Corp. v. Di Pardo Packing Ltd.*, 60 USPQ2d 1372, 1374 (TTAB 2001) (same); *Atlanta Fulton County Zoo Inc. v. De Palma*, 45 USPQ2d 1858 (TTAB 1998) (motion to reopen discovery and testimony periods denied, motion to dismiss granted).

The purpose of the motion under 37 CFR § 2.132(a) is to save the defendant / Registrant the expense and delay of continuing with the trial in those cases where plaintiff / Petitioner has failed to offer any evidence during its testimony period. 37 CFR § 2.132(a)

It is suggested most dispositive of the instant matter, Petitioner failed to submit even one scintilla of evidence to the Board during its trial period. It is thus respectfully submitted to the Board that this case is the exact case envisioned by 37 CFR § 2.132(a) and its purpose of saving the defendant / Registrant the expense and delay of continuing with the trial in those cases where plaintiff / Petitioner has failed to offer any evidence during its testimony period.

Thus, it is respectfully submitted to the Board that the instant matter is ripe to be decided against the Petitioner under 37 CFR § 2.132(a) and that an order of dismissal, with prejudice, be entered by the Board.

CONCLUSION

WHEREFORE for the premises considered, Registrant, Theodore A. Stoner, by counsel, respectfully moves the Board for an order of dismissal, with prejudice, of the instant matter pursuant to 37 CFR § 2.132(a) for the Petitioner's failure to prosecute the instant matter and, ultimately, its failure to submit any evidence whatsoever in support of its case during its trial period.

Respectfully submitted this 19th day of July, 2016.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/
Matthew H. Swyers, Esq.
344 Maple Avenue West, Suite 151
Vienna, VA 22180
Tel. (800) 906-8626
Facsimile (270) 477-4574
mswyers@TheTrademarkCompany.com
Counsel for Registrant

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Stoner, Theodore A.,	:	
	:	
Registrant.	:	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a copy of the foregoing this 19th day of July, 2016, to
be served, via first class mail, postage prepaid, upon:

William W Stroeve
Greenberg Traurig LLP
500 Campus Drive, Suite 400
Florham Park, NJ 07932-0677

/Matthew H. Swyers/
Matthew H. Swyers