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September 16, 2025

Cancellation No. 92081122

iEnjoy Ventures, LLC

v.

Franktex, Inc.

Goodman, Lebow, and Lavache,
Administrative Trademark Judges.

As last reset, Petitioner's testimony period had closed on November 13, 2024.[1] Before and after the close of both Petitioner's and Respondent's testimony periods, the parties have sought and received several extensions and suspensions of proceedings for various reasons. Most recently, Petitioner sought an extension of proceedings on March 21, 2025 because the parties were engaged in settlement

[1] 22 TTABVUE. Citations to the Board record refer to TTABVUE, the Board's online docketing system, unless otherwise specified. *See Turdin v. Trilobite, Ltd.*, Conc. Use. No. 94002505, 2014 TTAB LEXIS 17, at *6 n.6 (TTAB 2014). The number preceding "TTABVUE" corresponds to the docket entry number, and any number following "TTABVUE" refers to the page number of the docket entry where the cited materials appear. The parties' future submissions, including trial briefs, motions, responses, and replies, should use citations to the TTABVUE record created throughout the proceeding and during trial to facilitate the Board's review of the evidence throughout the proceeding and at final hearing. *See Made in Nature, LLC v. Pharmavite LLC*, Opp. No. 91223352, 2022 TTAB LEXIS 228, at *40-41 (TTAB 2022); TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 801.03 (2025).

negotiations.[2] The Board granted that request and set May 26, 2025 as the due date for Petitioner's rebuttal disclosures and June 25, 2025 as the end of Petitioner's 15-day rebuttal period.[3]

This proceeding now comes up for consideration of Petitioner's motion (filed May 5, 2025) to take the testimony deposition of HinFan Tsang, the corporate representative of Respondent, outside its testimony period.[4] The motion is fully briefed.

In support of its motion, Petitioner explains that in its pretrial disclosures Respondent represented that it intended to take the testimony from Mr. Tsang regarding certain topics, but that ultimately Respondent did not take the testimony of Mr. Tsang. Petitioner seeks to take the deposition and testimony of Mr. Tsang "on or before June 25, 2025, as it has become clear that Respondent's settlement efforts have been disingenuous and conducted in bad faith"; that "Petitioner presented Respondent with a settlement offer on February 21, 2025, and has failed to receive any type of substantive response to date despite multiple follow-ups"; that "[o]n April 11, 2025, Petitioner also emailed Respondent advising that Petitioner planned to file the instant motion…asking if Respondent consented to the relief sought"; that "[n]o substantive response was ever received"; and that "[g]iven Respondent's clear delay tactics and bad faith settlement 'efforts'" Petitioner desires to take the deposition and testimony of Mr. Tsang on the topics identified in Respondent's pretrial disclosures

[2] 29 TTABVUE.
[3] 30 TTABVUE.
[4] 31 TTABVUE.

as well as on "additional topics…."[5] Petitioner requests that it be granted leave to remotely take the deposition and testimony of Mr. Tsang.

In response, Respondent asserts that it "opposes this motion as it is clearly contrary to the rules of the Trademark Trial and Appeal Board…and no good cause has been shown for the TTAB to disregard the rules."[6] Respondent argues that "[b]ased on the Petitioner's very limited actions in the proceeding, Respondent did not need to take the testimony of Mr. Tsang during Respondent's 30-day Trial Period";[7] that "Petitioner did not take any discovery depositions nor any testimony depositions";[8] that "Petitioner simply failed to conduct its discovery or testimony period properly in consideration of its burden of proof in the proceeding";[9] and that "Petitioner now tries to blame Respondent as a basis for circumventing the TTAB's rules and the schedule in the proceeding."[10]

Respondent further contends that Petitioner did present Respondent with a confidential settlement communication on February 21, 2025, which expressly stated that such offer would remain open until February 28, 2025. Respondent states that it "allowed the period to respond to close based on the inadequacy of the offer."[11] Respondent asserts that after this expiration period, Petitioner "waited almost three months before further action" and that "Petitioner's lack of action during and after

[5] 31 TTABVUE 3.
[6] 32 TTABVUE 2.
[7] 32 TTABVUE 2.
[8] *Id*.
[9] *Id*. at 3.
[10] *Id*. at 3.
[11] *Id*.

its testimony period does not provide good cause for the TTAB to disregard the rules and allow new testimony during a rebuttal period."[12]

In reply, Petitioner states that "any attempt by Defendant to paint Plaintiff as not being diligent is disingenuous and unfounded."[13] Petitioner states that it "followed up" with Respondent's counsel several times after the expiration of the settlement offer.[14] Petitioner argues that it "is not asking the Board to disregard the TTAB rules" and that "[i]f anything, it is Defendant's Response that lacks any legal support or authority, particularly in support of Defendant's allegation that the present circumstances do not constitute good cause sufficient to support the taking of Mr. Tsang's testimony."[15]

A party may not take the testimony or present evidence outside of its assigned testimony period, except by stipulation of the parties approved by the Board, or, on motion, by order of the Board. Trademark Rule 2.121(a), 37 C.F.R. § 2.121(a); *see also Baseball Am. Inc. v. Powerplay Sports*, Opp. No. 91120166, 2004 TTAB LEXIS 443, at *4 n.8 (TTAB 2004) (documentary evidence submitted outside assigned testimony period given no consideration); *M-Tek Inc. v. CVP Sys. Inc.*, Can. No. 92017044, 1990 TTAB LEXIS 39, at *5 (TTAB 1990) (untimely deposition stricken).

In this instance, Petitioner's testimony period expired on November 13, 2024. Despite the intervening extensions and suspensions, the record indicates that Petitioner did not take testimony during the assigned period. During our review of

[12] *Id*.
[13] 33 TTABVUE 2.
[14] *Id*.
[15] *Id*. at 3.

the record, we observed that the Board granted Petitioner's August 20, 2024 motion to reopen its pretrial disclosure deadline on September 25, 2024.[16] In the same order the Board reset the close of Petitioner's trial period as November 13, 2025. After both of these deadlines lapsed, Petitioner filed four consented motions to extend its deadline for its rebuttal disclosure deadline.[17] Not once during this time period did Petitioner seek to reopen its testimony period so that it could actually take testimony. Only now has Petitioner determined that it needs to take the testimonial deposition of Mr. Tsang. We construe Petitioner's present motion as one to reopen its testimony period. We find, however, that Petitioner has not established the requisite excusable neglect to reopen its testimony period.[18] Petitioner's purported need to now take testimony because Respondent did not take the testimony of Mr. Tsang during Respondent's trial period and because Respondent failed to respond to Petitioner's settlement offer does not warrant permitting Petitioner, who holds the burden of proof, to take testimony outside its assigned period. Petitioner "brought this case and, in so doing, took responsibility for moving forward on the established schedule." *Atlanta-Fulton County Zoo Inc. v. DePalma*, Opp. No. 98919, 1998 TTAB LEXIS 9, at *6 (TTAB 1998). "[I]t is well established that the mere existence of settlement negotiations…does not justify a party's inaction or delay." *Id.* at 1859 (citations

[16] 22 TTABVUE.
[17] 23, 25, 27, 29 TTABVUE.
[18] Petitioner did not address any of the relevant factors involving the excusable neglect standard set forth in *Pioneer Investment Services Company v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 385 (1993), and followed by the Board in *Pumpkin, Ltd. v. The Seed Corps,* Opp. 99224, 1997 TTAB LEXIS 24, at *12 (TTAB 1997).

omitted); *see also Vital Pharms., Inc. v. Kronholm*, Opp. No. 91191806, 2011 TTAB LEXIS 207, at *10-11 (TTAB 2011).

Petitioner's motion is denied.

Apart from Petitioner's failure to take testimony, our review of the record reveals that Petitioner has not offered any evidence in support of its claims during its assigned testimony period in this proceeding. And Respondent makes no substantive admissions in its answers regarding. Under Trademark Rule 2.132(a), the Board may sua sponte enter judgment for the defendant in cases where the plaintiff has not submitted evidence or taken testimony during its assigned testimony period where it is clear that the plaintiff has not offered any other evidence. We choose to do so here.

Accordingly, because Petitioner, as the party bearing the burden of proof in this proceeding, has not presented testimony or properly introduced any other evidence during its initial testimony period as proof of the allegations of the petition to cancel which have been denied by Respondent, it is adjudged that Petitioner cannot prevail on its claims and that the petition to cancel must fail. Judgment is entered in favor of Respondent.

The petition to cancel is denied.