



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

THE PEP BOYS MANNY, MOE & JACK
OF CALIFORNIA,

Opposer,

v.

JET-PEP, INC.,

Applicant.

Opposition No. 150,819

**OPPOSER'S MOTION FOR
DISCOVERY SANCTIONS AND TO SUSPEND**

COMES NOW the Opposer, the Pep Boys Manny, Moe & Jack of California, by and through counsel, and respectfully moves the Trademark Trial and Appeal Board ("Board") for an order sanctioning Applicant for its failure to comply with the Board's February 25, 2005 Order. Specifically, Opposer respectfully seeks an Order from the Board entering judgment against Applicant, and sustaining the opposition.

Additionally, Opposer requests that the Board suspend these proceedings pending resolution of the present Motion.

On February 25, 2005, the Board issued an Order compelling Applicant to "serve its document production by mail on counsel for opposer, within thirty days from the mailing date of this order", or by March 27, 2005. *See* February 25, 2005 Order, p.4.

The deadline for Applicant to comply with the Board Order passed without Opposer receiving the Board-ordered documents, or any communication from Applicant's counsel.

04-14-2005

On March 29, 2005, Applicant's counsel advised that the Board-ordered documents had not been produced and he did not know when they would be produced.¹ Applicant has not sought an extension of the Board-ordered deadline, either. In fact, Opposer's counsel has not heard from Applicant's counsel since March 29, 2005.

As of April 14, 2005 – nearly three (3) weeks after the Board's deadline – Applicant has not complied with the Board's Order compelling production of documents by mail. Accordingly, Opposer respectfully submits that sanctions should be entered against Applicant in the form of an Order sustaining this Opposition.

Since the present Motion is potentially dispositive of the case, Opposer understands that proceedings are suspended without any further request from the parties. *See e.g.*, TBMP §510.03(a). However, to the extent that Opposer is incorrect in this understanding, it respectfully requests that the matter be suspended pending the outcome of the present Motion.

¹ Additionally, Applicant's counsel said he was not in a position to discuss the discovery issues raised in Opposer's April 5, 2004 Motion to compel, despite Opposer's *numerous* attempts before *and since* the filing of that motion to discuss these issues. *See also* Opposer's April 5, 2004 Motion to Compel; and Opposer's March 28, 2005 Motion for Partial Reconsideration or, in the Alternative, Opposer's Motion to Renew its Motion to Compel or, in the Alternative, Opposer's Motion for Extension of Time to File a Motion for Reconsideration and Trial Dates. If Opposer's present Motion is granted, its Motion for Partial Reconsideration would be moot.


WHEREFORE, Opposer respectfully requests that the Board grant its Motion for discovery sanctions and to enter judgment against Applicant and for Opposer, and sustain the present Opposition.

Respectfully Submitted,

THE PEP BOYS MANNY, MOE & JACK OF CALIFORNIA

Dated: April 14, 2005

By:



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CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of the foregoing Opposer's Motion for Sanctions to be served by first-class mail, postage prepaid, upon counsel for Applicant:

David J. Ervin, Esquire
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3050 K Street, N.W.
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this 14th day of April, 2005.