

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

LANCO CORPORATION)	
)	
Opposer,)	
)	
v.)	Opp. No. 91/154,043
)	
GEBR.HOFFMAN AG)	Ser. No. 75/545,553
)	Mark: Miscellaneous Design
Applicant.)	
)	

OPPOSER'S MOTION FOR SANCTIONS FOR FAILURE
TO COMPLY WITH BOARD DISCOVERY ORDER

Opposer Lanco Corporation, by and through its undersigned attorney, hereby moves for sanctions under 37 CFR §2.120(g)(1) in the form of default judgment against the applicant and entry of abandonment of the application.

The record is clear that the applicant has consistently failed to provide timely discovery responses to opposer's first set of interrogatories and first and second requests for production of documents.

On July 3, 2003, opposer served applicant with Opposer's First Set of Interrogatories. On July 7, 2003, opposer served applicant with Opposer's First Set of Requests for Production of Documents. On July 9, 2003, opposer served applicant with Opposer's Second Set of Requests for Production of Documents.

After applicant failed to respond to the discovery requests and failed to respond to the opposer's motion to compel, the Board issued an order dated December 5, 2003, granting the opposer's motion to compel and ordered the applicant to respond without objection to opposer's first set of interrogatories and first and second sets of document requests. Instead of complying

with the Board's order, the applicant filed a motion for reconsideration and, in the alternative a request for extension of time to respond, on December 31, 2003. By order dated July 9, 2004, the motion for reconsideration was denied and the applicant was once again ordered to respond without objection to the opposer's discovery requests within 30 days.

This time, when the deadline approached, the applicant's attorney filed an extension request rather than serve opposer with responses without objections as ordered twice by the Board. By this request filed August 5, 2004, the applicant asked for an additional thirty day extension with responses due on or before September 9, 2004. Opposer stipulated to this extension in its response filed August 18, 2004.

The September 9 deadline has come and gone. Applicant has not served Opposer with responses to the discovery in compliance with the Board's order and applicant has not requested any further extension with or without the opposer's consent.

Applicant's conduct involves not only repeated failure by applicant to meet their discovery obligations but also failure to comply with Board orders specifically directing applicant to respond to opposer's July 2003 discovery requests.

The law is clear that if a party fails to comply with an order of the Board relating to discovery, including an order compelling discovery, the Board may order appropriate sanctions as defined in Trademark Rule 2.120(g)(1) and Fed.R.Civ.P. 37(b)(2), including the entry of judgment. MHW Ltd. v. Simex, Aussenhandelsgesellschaft Savelsberg KG, 59 USPQ2d 1477 (TTAB 2001), Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co., 55 USPQ2d 1848 (TTAB 2000); Unicut Corp. v. Unicut, Inc., 222 USPQ 341 (TTAB 1984); and TMBP Section 527.01.

Applicant's inaction highlights their intent to continue to delay this proceeding by setting up obstacles to opposer's receipt of clearly relevant information. Applicant has failed to follow Board practice and procedure, which has unnecessarily delayed this proceeding and raised the cost of this litigation.

Accordingly, opposer respectfully moves for the entry of default judgment against the applicant and the abandonment of the subject application.

In addition, opposer respectfully requests the Board to suspend this proceeding pending its decision on this motion. Opposer is unable to prepare its case due to the applicant's noncompliance with the Board's orders.

Respectfully submitted,

LANCO CORPORATION

By 

Date: October 8, 2004

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing OPPOSER'S MOTION FOR SANCTIONS FOR FAILURE TO COMPLY WITH BOARD DISCOVERY ORDER was served on the Applicant by forwarding same via First Class Mail, postage prepaid, to Applicant's counsel, J. Stephen Simms, Esq., Simms Showers LLP, 20 S. Charles Street, Suite 702, Baltimore, Maryland 21201, this 8th day of October, 2004.

A handwritten signature in cursive script, reading "Kathryn Jennison Shultz". The signature is written in black ink and is positioned above a horizontal line.

Kathryn Jennison Shultz