

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

THIS OPINION IS **NOT**
CITABLE AS PRECEDENT
OF THE TTAB

Mailed: October 7, 2005

Opposition No. 91152629
91152786
91160019
91160021
91160023
91160032
91160040

ROVCAL, INC.

v.

FREDERIC REMINGTON TRUST 1861

Before Hairston, Grendel and Holtzman,
Administrative Trademark Judges

By the Board.

This case now comes up on applicant's motion to suspend proceedings, filed August 3, 2005¹, pending a decision on applicant's petition to the Director. Opposer has opposed the motion to suspend and has filed a motion for default judgment as a sanction for applicant's failure to provide

¹ It is noted that applicant's motion is untimely. Trademark Rule 2.146(e)(2) provides that a petition from an interlocutory order of the Board shall be filed within thirty days after the mailing of the order from which relief is requested. The order applicant petitions from was mailed June 30, 2005, making July 30, 2005 the filing deadline. While applicant attempted to use the certificate of mailing procedure set out in 37 CFR § 2.197 and dated its motion to suspend July 29, 2005, the filings were mailed to the Board's former address, thereby making the certificate of mailing ineffective and the actual receipt date, August 3, 2005, operative.

discovery responses without objection and therefore its failure to comply with the Board's June 30, 2005 order.

Applicant's Motion to Suspend²

Trademark Rule 2.146(g) provides:

The mere filing of a petition to the Director will not act as a stay in any appeal or inter partes proceeding that is pending before the Trademark Trial and Appeal Board...

Applicant has requested the Board "to suspend the proceedings pending the determination and findings of the Director pursuant TBMP §905(e)(2) the Petitioner's review of the 6/30/05 TTAB decision." (Motion p. 1.) Although applicant did not provide the Board with a copy of its petition to the Director, on August 31, 2005, applicant submitted a copy of a letter to the Commissioner for Trademarks dated August 20, 2005, that appears to be a reply to opposer's objections, arguments in support of its petition and a reargument of the issues decided in the Board's June 30, 2005 decision.³ It appears⁴ that the relief sought by

² Although, as noted above, applicant's motion to suspend is untimely, we are exercising our discretion and deciding the motion on its merits.

³ These filings were entered into the companion case, consolidated Opposition No. 91152945.

⁴ Applicant's arguments, in its single-spaced filing, are largely unintelligible. From what can be gleaned from the document, applicant objects to the Board's refusal to reverse the previous orders issued in 2004 and dispose of this matter on the merits. Applicant is also, perhaps, arguing that opposer's oppositions were untimely.

applicant in its petition to the Director is "reversing the both Panel and Skoro decisions, orders, and failures, resetting the dates in the interest of justice and the appearance of fairness required in such Interlocutory proceedings." (p. 5 of document dated August 20, 2005). Opposer has addressed applicant's petition arguments in its response to the motion to suspend.⁵

A request to suspend Board proceedings during the pendency of a petition to the Director is discretionary with the Board. In the exercise of our discretion, we deny applicant's motion to suspend. The Board's June 30, 2005 order required applicant to respond to all outstanding discovery requests within thirty days. Applicant was warned "that the Board will not tolerate any further attempts to delay this case or to frustrate opposer's right to obtain discovery." Applicant was further advised "that its failure to comply fully and completely with this order will, upon motion by opposer, result in the entry of default judgment against applicant." (Order at p. 12.)

⁵ Opposer argues in its response to the motion to suspend, the procedural deficiencies in applicant's Petition to the Director. The Board will not consider the arguments against the petition, as the petition is not before the Board.

In light of the fact that applicant's petition to the Director appears to be a complete circumvention of the Board's order by failing to comply with the discovery orders and by attempting to further delay this case, applicant's request to suspend this proceeding is DENIED.

Motion for Default Judgment

In the Board's June 30, 2005 order, the Board went to great lengths to try and clarify for applicant why its discovery responses were clearly insufficient. The Board pointed out that applicant had failed to take this matter seriously by not complying with the Federal Rules of Civil Procedure, the Board rules and Board orders. The Board also indicated that, while being exceedingly patient with applicant by denying opposer's motion to dismiss at that point, it was imperative that applicant take advantage of that "one final opportunity to comply with the order" and to cooperate in the discovery process and refrain from filing any further potentially dispositive motions without prior leave of the Board." (pages 11-12.) In its motion for default judgment, opposer states that applicant has failed to provide any responses to the outstanding discovery requests.

In this proceeding, applicant has not filed a response to opposer's motion for default judgment. However, rather

than granting opposer's motion as conceded, the Board will exercise its discretion and decide the motion on its merits with the information applicant provided in the companion case. Applicant's response to the motion for default judgment is obtained from letters directed to Commissioner Beresford.⁶ In these letters, applicant argues that opposer's motion for default is untimely because it was filed with the Board, and not the Director; that because applicant filed a petition to the Director, that proceedings have been suspended and opposer is attempting to "usurp the Petition and the Director's mandate to correct any clear error/abuse of discretion in the 6/30/05 decision..."; that the Board was without authority to impose discovery sanctions; and that there is no possibility of any likelihood of confusion given the differences of the parties' goods.

Applicant's request to suspend Board proceedings pending a decision on its petition is being denied.

⁶ On August 31, 2005 the Board received two documents from applicant that are single-spaced and are set up as letters with "Dear Commissioner Beresford" as a salutation. The first contains a subject line entitled: "Applicant's Reply to Opposer's Response to Applicant's Petition to the Director in Consolidated Opposition No. 91152945, with Objection to Opposer's Untimely Filed Motion for Default in 91152945" and the second one is: "Applicant's Objection to Opposer's Untimely Motion for Default Judgment in Attempted Usurp of Director's Authority and Petitioner's Right to Petition the Director for Review in Consolidated Opposition No. 91152945". These have been entered into the record as applicant's response to opposer's motion for default judgment and reply in support of its motion to suspend in consolidated Opposition 91152945.

Further, having failed to comply with the Board's orders to provide responses to the outstanding discovery requests after been warned numerous times, opposer's motion for default judgment is hereby GRANTED.

Accordingly, judgment is hereby entered against applicant, the opposition is sustained, and registration of application Serial Nos. 76/080800; 76/080802; 76/080804; 76/080806; 76/080808; 76/080809; 76/080812 are refused to applicant.⁷ Because this is a consolidated proceeding, a copy of this decision shall be placed in each of the individual opposition files.

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⁷ If applicant had followed Board procedures and obeyed Board orders, this matter would have been decided on the merits as requested by applicant, which is the purpose of an opposition proceeding. However, it is applicant's obstructionist tactics that have prevented a decision on the merits in this case.