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Filing date: **09/29/2005**

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

Proceeding	91160362
Party	Defendant Beauty Holding Company, Inc. Beauty Holding Company, Inc. 25 Church Street BMX Hamilton, HM12
Correspondence Address	DIANE G. ELDER WILDMAN, HARROLD, ALLEN & DIXON 225 WEST WACKER DRIVE CHICAGO, IL 60606-1229 elder@wildmanharrold.com
Submission	Motion for Sanctions
Filer's Name	Diane G. Elder
Filer's e-mail	elder@wildmanharrold.com
Signature	/Diane Grace Elder/dge/;/61590/
Date	09/29/2005
Attachments	Motion for Sanctions.tif (9 pages)

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

CONAIR CORPORATION,)	
)	
Opposer,)	
)	
v.)	Opp. No. 91160362
)	
BEAUTY HOLDING COMPANY, INC.)	
)	
Applicant.)	

**APPLICANT’S MOTION FOR SANCTIONS
AND MEMORANDUM IN SUPPORT**

In accordance with Rule 2.120(g) of the Trademark Rules of Practice and Rule 37(b)(2)(C) of the Federal Rules of Civil Procedure, applicant, Beauty Holding Company, Inc. (“Beauty Holding”), hereby moves this Honorable Board for an entry of sanctions against Conair Corporation (“Conair”) on the grounds that Conair has failed to provide discovery. Specifically, Beauty Holding requests that the Board enter sanctions in the form of a default judgment against Conair.

This motion is supported by the declaration of Bryan P. Sugar, submitted herewith. This motion is also supported by the declaration of Diane G. Elder, initially filed with the Board on May 17, 2005 in support of Beauty Holding’s motion to compel. For the convenience of the Board, a copy of the Elder Declaration is submitted herewith.

I. FACTS

On April 30, 2004, Conair filed a notice of opposition against Beauty Holding’s application to register the mark RADICAL BODY, App. No. 78/163,203 for hair care

preparations and electric hair styling appliances, namely, electric hair rollers, based on Conair's alleged rights in the mark RADICAL for hair care preparations. On June 14, 2004, Beauty Holding timely filed its answer generally denying the allegations in the notice of opposition.

On October 8, 2004 Conair Corporation was served with Applicant's First Set of Interrogatories to Opposer and Applicant's First Set of Document Requests to Opposer. Elder Decl. ¶ 2, Exh. A. On November 3, 2004, Debra Duguid, counsel for Conair, sent correspondence to Craig S. Fochler, counsel for Beauty Holding, acknowledging receipt of applicant's interrogatories and document requests and requesting a sixty (60) day extension of time to respond. Elder Decl. ¶ 3. On November 9, 2004, Mr. Fochler agreed to extend the time for Conair to respond to Beauty Holding's discovery requests for sixty (60) days, in exchange for Conair's agreement, in part, to serve any written discovery on Beauty Holding by December 7, 2004. Elder Decl. ¶ 4. On November 10, 2004, the parties filed a motion for extension of discovery. Elder Decl. ¶ 5. The close of discovery was reset for February 16, 2005. Elder Decl. ¶ 5.

On February 11, 2005, Diane G. Elder, counsel for Beauty Holding, telephoned Ms. Duguid to, *inter alia*, request a ninety (90) day extension of time for discovery. Elder Decl. ¶ 6. During that conversation, Ms. Elder requested Conair to respond to Beauty Holding's discovery requests. Elder Decl. ¶ 6. Ms. Duguid indicated that she did not remember that the responses were due and requested an extension to respond to discovery. Elder Decl. ¶ 6. Ms. Elder stated that she would consider the request and get back to Ms. Duguid. Elder Decl. ¶ 6. In a telephone conference on February 14, 2005 between Ms. Elder and Ms. Duguid, Ms. Elder advised that Beauty Holding would not agree to the requested extension of time to respond to discovery. Elder Decl. ¶ 7. Ms. Duguid stated that Conair would serve Beauty Holding with its responses to

discovery. Elder Decl. ¶ 7. Also on February 14, 2005, counsel for applicant filed a motion with consent for extension of discovery, requesting that close of discovery be extended to May 18, 2005. The request was granted by the Trademark Trial and Appeal Board. Elder Decl. ¶ 8.

On May 17, 2005, Beauty Holding filed a motion to compel, requesting the Board to enter an order compelling Conair to respond to Beauty Holding's outstanding discovery requests, without objection. Conair did not oppose the motion. On July 1, 2005, the Board issued an order compelling Conair to respond to Beauty Holding's outstanding discovery requests on or before July 31, 2005. Board Order dated July 1, 2005. To date, Conair has not provided responses to applicant's discovery requests. Sugar Decl. ¶ 2, Exh. B.

II. ARGUMENT

It is well settled that if a party fails to comply with an order of the Board compelling discovery, the Board may order appropriate sanctions as defined in Rule 2.120(g)(1) of the Trademark Rules of Practice and Rule 37(b)(2) of the Federal Rules of Civil Procedure, including entry of default judgment. *MHW Ltd. v. Simex, Aussenhandelsgesellschaft Savelsberg KG*, 59 U.S.P.Q.2d 1477, 1478 (T.T.A.B. 2001); *Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 U.S.P.Q.2d 1848, 1852 (T.T.A.B. 2000); *Unicut Corp. v. Unicut, Inc.*, 222 U.S.P.Q. 341, 344 (T.T.A.B. 1984). Default judgment is a harsh remedy, but it is justified where no less drastic remedy would be effective and there is a strong showing of willful evasion. *Baron Philippe*, 55 U.S.P.Q.2d at 1852; *Unicut Corp.*, 222 U.S.P.Q. at 344.

Here, Conair has had close to a year to respond to Beauty Holding's discovery requests. Elder Decl. ¶2, Exh. A. Beauty Holdings agreed to a sixty (60) day extension of time for Conair to respond to its discovery, but Conair failed to respond in a timely manner. Elder Decl. ¶ 3. Beauty Holding subsequently reminded Conair that its responses were well over due. Elder Decl. ¶ 6. Notwithstanding Conair's promise to provide discovery, it failed to do so. Elder Decl.


¶ 9. In an effort to obtain the requested discovery, Beauty Holding filed a motion to compel with the Board. Evidencing its disinterest in this proceeding and disregard for its duty to diligently prosecute this matter, Conair failed to respond to the motion to compel. See Board Order dated July 1, 2005. Finally, Conair failed to comply with the Board's order compelling it to respond to Beauty Holding's discovery, notwithstanding the fact that the Board's order of July 1, 2005 clearly warned Conair that the Board would not tolerate further delays. See Board Order dated July 1, 2005.

Conair's acts demonstrate willful disregard of the Trademark Rules of Practice and the July 1, 2005 Order issued by this Honorable Board. In view of Conair's prolonged, consistent and willful evasion of its obligations to provide discovery in this proceeding, Beauty Holding submits that a less drastic remedy would not be effective. Accordingly, Beauty Holding respectfully requests that the Board enter an order sanctioning Conair by entering a default judgment against it.

Respectfully submitted,

WILDMAN, HARROLD, ALLEN & DIXON, LLP

Date: September 29, 2005



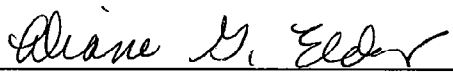
Diane G. Elder
Bryan P. Sugar
225 West Wacker Drive
Chicago, Illinois 60606-1229
Telephone: (312) 201-2000

Counsel for Applicant,
Beauty Holding Company, Inc.

CERTIFICATE OF SERVICE

I, Diane G. Elder, hereby certify that a copy of the Applicant's Motion For An Order For Default Judgment And Memorandum In Support was served on Debra Duguid, Conair Corporation, One Cummings Point Road, Stamford, CT 06902 by first class mail, postage prepaid, on September 28, 2005.

Date: September 29, 2005



Diane G. Elder

**3IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

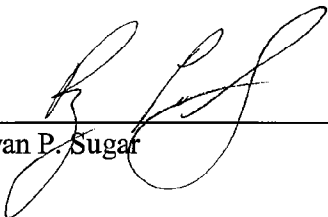
CONAIR CORPORATION,)	
)	
Opposer,)	
)	
v.)	Opp. No. 91160362
)	
BEAUTY HOLDING COMPANY, INC.)	
)	
Applicant.)	

DECLARATION OF BRYAN P. SUGAR

I, Bryan P. Sugar, hereby declare as follows:

1. I am an associate with the firm Wildman, Harrold, Allen & Dixon in Chicago, Illinois, attorneys for applicant Beauty Holding Company, Inc. (“Beauty Holding”).
2. As of September 28, 2005, Conair Corporation has not provided Beauty Holding with responses to Applicant’s First Set of Interrogatories to Opposer and Applicant’s First Set of Document Requests to Opposer.
3. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true and that willful false statements and the like so made are punishable by fine or imprisonment or both under Section 1001 of Title 18 of the United States Code, and may jeopardize the validity of the application or any registration resulting therefrom.

Date: September 29, 2005.



Bryan P. Sugar

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

CONAIR CORPORATION,)
)
Opposer,)
)
v.) Opp. No. 91160362
)
BEAUTY HOLDING COMPANY, INC.)
)
Applicant.)

DECLARATION OF DIANE G. ELDER

I, Diane G. Elder, hereby declare as follows:

1. I am a partner with the firm Wildman, Harrold, Allen & Dixon in Chicago, Illinois, attorneys for applicant Beauty Holding Company, Inc.
2. On October 8, 2004 Conair Corporation was served with Applicant's First Set of Interrogatories to Opposer and Applicant's First Set of Document Requests to Opposer via First Class Mail. True and correct copies of the aforesaid discovery requests are attached hereto as Exhibit A.
3. On November 3, 2004, Debra Duguid, counsel for Conair Corporation, sent correspondence to Craig Fochler, counsel for Applicant, acknowledging receipt of Applicant's Interrogatories and Document Requests and requesting a sixty (60) day extension of time to respond. A true and correct copy of the aforesaid correspondence is attached hereto as Exhibit B.
4. On November 9, 2004, Mr. Fochler agreed to extend the time for Conair Corporation to respond to applicant's interrogatories and document requests for 60-

CERTIFICATE OF MAILING

I hereby certify that this paper is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451 on May 13, 2005
Heather C. Desjardins

days, in exchange for agreeing, in part, to serve any written discovery on applicant by December 7, 2004.

5. On November 10, 2004, the parties filed An Agreed Motion to Reschedule Discovery Period and Subsequent Periods Pursuant to Trademark Rule 2.121(a)(1), rescheduling the closing of discovery and testimony period. The close of discovery was reset for February 16, 2005.

6. On February 11, 2005, Diane G. Elder, counsel for applicant, initiated a telephone conference with Debra Duguid to request a ninety (90) day extension of time for discovery or trial periods. During that conversation, Ms. Elder requested responses to applicant's discovery requests. Ms. Duguid indicated that she did not remember that the responses were due and requested an extension to respond to discovery. Ms. Elder advised that she would review the matter and get back to Ms. Duguid.

7. In a telephone conference on February 14, 2005 between Ms. Elder and Ms. Duguid, Ms. Elder advised Ms. Duguid that applicant would not agree to the requested extension to respond to discovery. Ms. Duguid responded that Conair Corporation would serve applicant with its responses to discovery.

8. Also on February 14, 2005, counsel for applicant filed a motion with consent for extension of discovery, requesting that close of discovery be extended to May 18, 2005, which was granted by the Trademark Trial and Appeal Board.

9. Applicant's attorneys have made a good faith effort, through telephonic conferences and correspondence, to resolve with the Conair Corporation the issues presented in this motion to compel discovery and have not yet been provided responses to applicant's discovery requests.

10. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true and that willful false statements and the like so made are punishable by fine or imprisonment or both under Section 1001 of Title 18 of the United States Code, and may jeopardize the validity of the application or any registration resulting therefrom.

Date: May 13, 2005

Diane G. Elder
Diane G. Elder