

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

Mailed: August 9, 2007

Opposition No. 91165506

HBI BRANDED APPAREL ENTERPRISES,
LLC and SARA LEE GLOBAL FINANCE,
LLC¹

v.

TSA CORPORATE SERVICES, INC.

Cheryl Butler, Attorney, Trademark Trial and Appeal Board:

In accordance with the Board's order dated September 12, 2005, proceedings were suspended for purposes of settlement discussions. The order included a resumption schedule, commencing March 12, 2006. Insofar as no answer was of record, applicant was allowed thirty days from the date of resumption to file its answer. Presently, no answer is of record. In accordance with the resumption schedule, all testimony closed on January 6, 2007 (close of opposers' rebuttal testimony period). No testimony has been taken and filed and no other evidence has been submitted.

This case now comes up on applicant's motion, filed January 17, 2007, for involuntary dismissal for opposers' failure to

¹ HBI Branded Apparel Enterprises, LLC's motion, filed February 23, 2007, to join as party-plaintiff is granted. Joinder is appropriate in this case because the operative assignment occurred after commencement of this proceeding. Such assignment is recorded at Reel 3381, Frame 0837. See TBMP §512.01 (2d ed. rev. 2004).

submit evidence and opposers' cross-motion, filed February 23, 2007, for default judgment for applicant's failure to file an answer.

More specifically, in support of its motion, applicant argues that opposers failed to take testimony, offer any evidence, or seek an extension of the testimony period. Noting that the testimony period has now expired, applicant asks that the Board dismiss the opposition with prejudice.

In response, opposers cross-moved for default judgment for applicant's failure to file an answer. Opposers argue that applicant's failure to answer prejudiced opposers because, among other things, discovery could not proceed properly without joinder of issue.

It is apparent to the Board that both parties overlooked the resumption schedule set out in the September 12, 2005 order. The Board has the inherent authority to schedule the disposition of cases on its docket. *See Carrini, Inc. v. Carla Carini, S.r.L.*, 57 USPQ2d 1067, 1071 (TTAB 2000). *See also Opticians Ass'n of America v. Independent Opticians of America, Inc.*, 734 F.Supp. 1171, 14 USPQ2d 2021 (D. N.J. 1990), rev'd on other grounds, 920 F.2d 187, 17 USPQ2d 1117 (3d Cir. 1990). In order to get this case back on track, the Board reopens proceedings in a limited manner. In view of this reopening, each party's motion for judgment in its favor is deemed moot.

The parties are informed that, notwithstanding this reopening of proceedings, the Board will not consider any future filed motions to compel or motions for summary judgment because the testimony period has opened once in this case. See Trademark Rules 2.120(e)(1) and 2.127(e)(1); and TBMP §§523.03 and 528.02 (2d ed. rev. 2004). The parties are also reminded that, if responses are not provided to discovery requests (either outstanding or that may be made in accordance with the schedule below), that party failing to provide the responses may be precluded from relying on such withheld information or materials at trial, upon a proper object or motion to strike.

Applicant is allowed until **THIRTY DAYS** from the mailing date of this order in which to file its answer to the notice of opposition. Each party is allowed until **THIRTY DAYS** from the mailing date of this order in which to serve responses to the outstanding discovery requests (if any) of its adversary.

Discovery and trial dates are reset as follows:

THE PERIOD FOR DISCOVERY TO CLOSE:	October 15, 2007
30-day testimony period for party in position of plaintiff to close	January 13, 2008
30-day testimony period for party in position of defendant to close:	March 13, 2008
15-day rebuttal testimony period to close:	April 27, 2008

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on

the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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