UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: August 17, 2015

Opposition No. 91194292

Larry Marshak

v.

Katherine Schaffner and Gladys Horton

Millicent Canady, Paralegal Specialist:

The time for Opposer to file a brief on the case has expired, and no brief on the case is of record.

Trademark Rule 2.128(a)(3) provides

> When a party in the position of plaintiff fails to file a main brief, an order may be issued allowing plaintiff until a set time, not less than fifteen days, in which to show cause why the Board should not treat such failure as a concession of the case. If plaintiff fails to file a response to the order, or files a response indicating that he has lost interest in the case, judgment may be entered against plaintiff.

In view of the failure to file a brief, Opposer is allowed until thirty days from the mailing date of this order to show cause why the Board should not treat the failure to file a brief as a concession of the case, failing which a judgment dismissing the notice of opposition with prejudice will be entered.[1] *See* TBMP §§ 536 and 801.02(a).

[1] Even if the Board discharges an order to show cause under Trademark Rule 2.128(a)(3), dismissal with prejudice for failure to prosecute may be warranted under Trademark Rule

Proceedings are otherwise suspended.

2.132(a) if a plaintiff placed no evidence in the record. In addition, if a plaintiff files a brief on the case concurrently with its response to an order to show cause under Trademark Rule 2.128(a)(3), or wishes to be afforded an opportunity to file its brief, a plaintiff should set forth a motion to reopen its time to file a brief, which motion will be determined on the basis of whether plaintiff has shown that its failure to timely file such brief was the result of excusable neglect. *See* TBMP § 536.