

ESTTA Tracking number: **ESTTA549844**

Filing date: **07/23/2013**

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

Proceeding	91208005
Party	Defendant Ty-Float, Inc.
Correspondence Address	FRANK B MESMER JR MESMER & DELEAULT PLLC 41 BROOK ST MANCHESTER, NH 03104-3599 UNITED STATES frank@biz-patlaw.com
Submission	Other Motions/Papers
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Date	07/23/2013
Attachments	Mot Dismissal of Opposition.pdf(74298 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Alphasource, Inc.)	Opposition No.: 91208005
)	Serial No.: 85/219800
Opposer)	Mark: "THINK FME!" [and Design]
v.)	
Ty-Flot, Inc.)	
)	
Applicant)	

MOTION FOR DISMISSAL OF OPPOSITION

NOW COMES Ty-Flot, Inc. ("Applicant"), by and through its attorneys, Mesmer & Deleault, PLLC, with a Motion for Dismissal of Opposition, which is also in the nature of Summary Judgment, and says as follows:

1. From January 15 through February 11, 2013, counsel for the parties engaged in correspondence to discuss the possibility of settlement, but no agreement was reached.
2. Initial Disclosures were due February 22, 2013, but Applicant never received Opposer's Initial Disclosures.
3. Discovery in this case ended July 22, 2013, but Opposer has not conducted any discovery.
4. Settlement discussions ended long before the close of discovery.
5. "If the time for taking testimony by any party in the position of plaintiff has expired and that party has not taken testimony or offered any other evidence, any party in the position of defendant may, without waiving the right to offer

evidence in the event the motion is denied, move for dismissal on the ground of the failure of the plaintiff to prosecute. . . . In the absence of a showing of good and sufficient cause, judgment may be rendered against the party in the position of plaintiff.” 37 C.F.R. § 2.132(a).

6. Trademark Rule 2.132 provides for involuntary dismissal of a proceeding if (a) plaintiff has not taken testimony or offered any other evidence (failure to prosecute), or (b) plaintiff relies only on PTO records and defendant establishes that plaintiff has "shown no right to relief." *Otter Products LLC v. BaseOneLabs LLC*, 105 U.S.P.Q.2d 1252 (TTAB 2012)
7. Opposer has failed to prosecute this case pursuant to Trademark Rule 2.132.
8. Opposer appears to rely exclusively on the PTO records as Opposer has not sought any additional information from Applicant and has proffered no other evidence of record.
9. The record reflects that Opposer has shown no priority or any likelihood of confusion and has shown no other right to relief.
10. Applicant submits that this opposition is frivolous and apparently was filed only to delay registration.
11. As the record shows that there are no genuine issues of material fact, Applicant is entitled to judgment as a matter of law. TBMP § 528.01.
12. Wherefore, Applicant respectfully asks the Board to dismiss this opposition with prejudice, in favor of Applicant, and to complete the registration of Applicant's trademark registration.

Respectfully submitted,
Ty-Flot, Inc.
by its attorney,

Dated: July 23, 2013

/s/Frank B. Mesmer, Jr., Esq.
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Motion for Dismissal of Opposition has been served by mailing said copy on this date, via First Class Mail, postage prepaid, to Tristram R. Fall, III, Esq., Fox Rothschild LLP, 2000 Market Street 20th Floor, Philadelphia, PA 19103.

/s/ Frank B. Mesmer, Jr., Esq.
Frank B. Mesmer, Jr., Esq.