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

Proceeding	91229192
Party	Plaintiff Institut National de l'Origine et de la Qualite, Comite interprofessionnel du vin de Champagne
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Submission	Motion for Sanctions (Other)
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

INSTITUT NATIONAL DE L'ORIGINE)	
ET DE LA QUALITÉ,)	
)	
and)	
)	Opposition No. 91229192
COMITÉ INTERPROFESSIONNEL DU VIN DE)	
CHAMPAGNE)	Application Serial No.: 86/547,065
)	
Opposers,)	Mark: CHAMPLEASURE
)	
v.)	Published in the Official
)	Gazette of March 29, 2016
STEPHEN BURDEN)	
)	
Applicant.)	

OPPOSERS' MOTION FOR SANCTIONS

Pursuant to TBMP § 527, Trademark Rule 2.120(h)(1), and Rule 37(b)(2) of the Federal Rules of Civil Procedure, Opposers, Comité Interprofessionnel du Vin de Champagne and Institut National de l'Origine et de la Qualité ("Opposers"), respectfully move the Board for sanctions against Applicant Stephen Burden ("Applicant") in the form of a default judgment sustaining the opposition and refusing registration of the subject mark, for failure to comply with its discovery obligations and with the Board's order of September 25, 2017. In support of this motion, Opposers state as follows:

I. BACKGROUND & FACTS

On April 21, 2017, Opposer served the Applicant with Opposers' Requests for the Production of Documents and Things and Opposers' Interrogatories. See Exhibits A and B to Motion to Compel (Docket Doc. 9). The Applicant's responses to Opposer's discovery requests

were due May 26, 2017. No response was received. Opposers' follow-up communications with Applicant's counsel failed to result in any discovery responses from Applicant or, indeed, any reply of any kind. See attached Declaration of Peter M. Brody, Esq. ("Brody Declaration"), ¶¶ 3 and 4.

On June 30, 2017, Opposers filed a Motion to Compel discovery responses (Docket Doc. 9). Applicant did not file a response to the motion or to the outstanding discovery requests. On September 25, 2017, the Board granted the Motion to Compel and ordered Applicant to "serve within **20** days of the mailing date of this order, responses to the Opposers' interrogatories and request for the production of documents and things . . . In the event that Applicant fails to serve full responses as ordered herein, Opposers' remedy may lie in a motion for sanctions, as appropriate. See Trademark Rule 2.120(h)(1); TBMP § 411.05."

To date, Applicant has not served any responses to the discovery requests or produced any documents, and has not otherwise communicated with Opposers in any manner. See Brody Declaration ¶ 5.

II. ARGUMENT & RELIEF REQUESTED

As stated in the Board's September 25, 2017, order, and pursuant to TBMP § 527.01(a), "If a party fails to comply with an order of the Board relating to discovery, including a protective order or an order compelling discovery, the Board may enter appropriate sanctions, as defined in 37 CFR § 2.120(h)(1)." TBMP § 527.01(a); *accord id.* § 411.05. In a situation where there has been continuing avoidance of discovery, the Board will enter a default judgment against the disobedient party. See, e.g., *Baron Philippe de Rothschild S.A. v. Styl Rite Optical Mfg. Co.*, 55

USPQ2d 1848 (TTAB 2000); *Unicut Corp. v. Unicut, Inc.*, 222 USPQ 341 (TTAB 1984); and TBMP § 527.01.

Applicant has clearly failed to comply with its discovery obligations and with the Board's September 25, 2017 order. Applicant has been represented by counsel throughout this proceeding, and its disregard of its discovery obligations and the Board's express order must be deemed to be willful. Sanctions in the form of default judgment against Applicant therefore are appropriate.

Accordingly, Opposers respectfully move this Board to enter judgment for Opposers pursuant to Trademark Rule 2.120. Opposers further move this Board for any other relief it deems appropriate.

WHEREFORE, Opposers respectfully request that the Trademark Trial and Appeal Board grant the Motion for Sanctions, enter judgment for Opposers, and grant all other appropriate relief.

Respectfully submitted,

Dated: November 9, 2017

/Peter M. Brody/
Peter M. Brody, Esq.
ROPES & GRAY LLP
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Washington, D.C. 20006-6807

Attorneys for Comité Interprofessionnel du Vin de
Champagne and the Institut National de l'Origine
et de la Qualité

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DECLARATION OF PETER M. BRODY, ESQ.

I, Peter M. Brody, Esq., declare as follows:

1. I represent Opposers Comité Interprofessionnel du Vin de Champagne and Institut National de l'Origine et de la Qualité in this matter.

2. I have knowledge of the facts set forth herein and in Opposers' Motion for Sanctions.

3. Opposers' Requests for the Production of Documents and Things and Opposers' Interrogatories were served upon Applicant on April 21, 2017. Applicant did not respond to those discovery requests in any fashion.

4. On May 31, 2017, I sent an e-mail correspondence to Applicant's counsel stating that their responses were outstanding and asking when responses would be provided. I received no response to that e-mail at any time.

5. On June 30, 2017, this firm filed a Motion to Compel discovery responses on behalf of Opposers (Docket Doc. 9). Applicant did not file a response to that motion or to the outstanding discovery requests. On September 25, 2017, the Board granted the Motion to Compel and ordered Applicant to “serve within 20 days of the mailing date of this order, responses to the Opposers’ interrogatories and request for the production of documents and things . As of this date, Applicant still has provided no response to the outstanding discovery requests or communicated with this firm in any manner.

6. Pursuant to 37 C.F.R. § 2.120(e) and TBMP § 523.02, I have made a good faith effort to resolve the issues presented by Applicant’s lack of responses to Opposers’ Requests for the Production of Documents and Things and Opposers’ Interrogatories.

7. Additional details regarding the nature and dates of these good faith efforts are contained in Opposers’ Motion to Compel filed June 30, 2017, and in the Motion for Sanctions attached herewith.

I declare under penalty of Perjury that all of the foregoing is true and correct.

Dated: November 9, 2017

/Peter M. Brody/
Peter M. Brody, Esq.

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