

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

DUNN

Mailed: October 2, 2017

Opposition No. 91230056

Amazon Sun, LLC

v.

Agroindustrias Tres Generaciones SAC

Elizabeth A. Dunn, Attorney (571-272-4267):

Opposer is allowed until TWENTY DAYS from the mailing date of this order to file a response to Applicant's motion to dismiss filed July 30, 2017, failing which Applicant's motion may be granted as conceded.¹ See Trademark Rules 2.127(a) and 2.132.

Pursuant to the Board's December 23, 2016 order approving the parties' consented motion to extend the trial schedule to allow settlement discussions, discovery closed June 21, 2017, Opposer's pretrial disclosures were due August 5, 2017, and Opposer's testimony period closed September 19, 2017.

¹ The USPTO records show that Opposer's pleaded Registration No. 3475049 was cancelled for failure to file a Section 8 affidavit on March 6, 2015, before the September 14, 2016 commencement of this proceeding. Because Opposer also pleaded common law rights in the same mark, cancellation of the registration did not affect the sufficiency of the notice of opposition.

Accordingly, to the extent that Applicant seeks dismissal for Opposer's failure to serve discovery, which is not mandatory, and for failure to serve pretrial disclosures by July 6, 2016, which was not the due date², the Board will give no consideration to those grounds for dismissal.

Opposer failed to file any testimony or evidence during its trial period. Therefore, the Board construes Applicant's motion as seeking judgment for failure of the plaintiff to prosecute under Trademark Rule 2.132(a).

If Opposer's failure to prosecute was based on a belief that Applicant's motion was potentially-dispositive, and thus proceedings were considered suspended with the filing of the motion, Opposer is allowed until TWENTY DAYS from the mailing date of this order to so state, failing which Applicant's motion as seeking judgment for failure of the plaintiff to prosecute under Trademark Rule 2.132(a) motion may be granted.

Proceedings are suspended pending Opposer's response to this order.

² When a party fails to make required pretrial disclosures, any adverse party or parties may have remedy by way of a motion to the Board to delay or reset any subsequent pretrial disclosure deadlines and/or testimony periods. *See* Trademark Rule 2.121(e).