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

Proceeding	91233165
Party	Defendant Park Hotels & Resorts, Inc.
Correspondence Address	ANNA KURIAN SHAW HOGAN LOVELLS US LLP 555 13TH STREET NW, COLUMBIA SQUARE WASHINGTON, DC 20004-1109 UNITED STATES Email: DCPTOTrademarkMail@hoganlovells.com, anna.shaw@hoganlovells.com, timothy.lyden@hoganlovells.com, raymond.kurz@hoganlovells.com, katherine.bastian@hoganlovells.com, tmorey@pkhotelsandresorts.com, boxip@hoganlovells.com, swingader@pkhotelsandresorts.com, MHackbarth@pkhotelsandresorts.com
Submission	Motion to Dismiss 2.132
Filer's Name	Anna Kurian Shaw
Filer's email	anna.shaw@hoganlovells.com, dctmfiling@hoganlovells.com, DCPTOTrademarkMail@hoganlovells.com
Signature	/AKS/
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Attachments	2018-08-08 Park Hotels Motion for Judgment.pdf(19904 bytes)

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

In re: Application Serial No. 87057391
Mark: PARK HOTELS & RESORTS

Park Hotel Management Pte Ltd.)	
)	
Opposer,)	
)	
v.)	Opposition No. 91233165
)	
Park Hotels & Resorts Inc.)	
)	
Applicant.)	
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**APPLICANT’S MOTION FOR JUDGMENT UNDER
TRADEMARK RULE 2.132(A) FOR OPPOSER’S FAILURE TO PROSECUTE ITS CASE**

Pursuant to 37 C.F.R. § 2.132(a) and T.B.M.P. § 534.01, Applicant Park Hotels & Resorts Inc. (“**PK**” or “**Applicant**”) hereby moves that the Trademark Trial and Appeal Board (“**TTAB**” or “**Board**”) dismiss Opposition No. 91233165 with prejudice, on grounds that Opposer Park Hotel Management Pte Ltd. (“**Opposer**”) failed to prosecute the Opposition, namely, by failing to take any testimony or offer any evidence in this case during its testimony period, which is now expired.

FACTUAL BACKGROUND

Opposer has repeatedly requested extensions of the testimony period deadlines and PK has consented to such deadlines in the past. On March 6, after discovery in this case had closed and Opposer had served its pre-trial disclosures, Opposer requested a 60-day extension of the remaining deadlines in this case. PK expressly consented to the extension. On May 7, Opposer requested a further 60-day extension of time. PK also expressly consented to this extension.

On July 13, 2018, three (3) weeks before the close of Opposer’s testimony period, counsel for PK specifically and expressly advised counsel for Opposer that PK would not agree to a further extension of the deadlines unless Opposer confirmed in writing that the settlement terms last proposed by PK on June 29, 2018 would form the basis of a settlement. Applicant never received such confirmation in writing or otherwise. On

the day before the last day of Opposer's testimony period (which ended on August 3, 2018), Opposer then requested a further 90-day extension of the deadlines in this case. PK objected to the request for extension, with such objection being consistent with PK's express communication to Opposer, delivered on July 13. PK now brings this Motion because Opposer has failed to prosecute its case by not presenting any testimony or evidence during its testimony period, which closed on August 3, 2018.

ARGUMENT

The Board should dismiss this Opposition with prejudice because Opposer has failed to present any evidence or take any testimony during its testimony period. As set forth in 37 C.F.R. § 2.132(a):

If the time for taking testimony by any party in the position of plaintiff has expired and it is clear to the Board from the proceeding record that such party has not taken testimony or offered any other evidence, the Board may grant judgment for the defendant. Also, 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. The party in the position of plaintiff shall have twenty days from the date of service of the motion to show cause why judgment should not be rendered dismissing the case. In the absence of a showing of excusable neglect, judgment may be rendered against the party in the position of plaintiff. If the motion is denied, testimony periods will be reset for the party in the position of defendant and for rebuttal.

Id.; *see also* T.B.M.P. § 534.01.

PK has already expended significant resources in defending this Opposition, including by answering the Notice of Opposition and attempting to negotiate a settlement. PK will now be forced to expend further valuable resources during its testimony period if this Motion is denied. Accordingly, PK files this Motion before the commencement of its own testimony period as specified under the Board's rules. *See* T.B.M.P. § 534.02.

In cases such as this one, when the party in the position of the plaintiff (*i.e.*, the Opposer) has failed to present any testimony or introduce any evidence at all during its testimony period, the Board has consistently dismissed such proceedings with prejudice under Trademark Rule 2.132(a), unless that party can meet the difficult burden of showing "good and sufficient cause," or "excusable neglect," for its failure to prosecute the case. *See, e.g., SFW Licensing Corp. v. Di Pardo Packing Ltd.*, 61 U.S.P.Q.2d 1372, 1375 (T.T.A.B. 2001) (granting motion to dismiss under Trademark Rule 2.132(a) after party in position of plaintiff "submitted no

testimony or evidence” during its testimony period; Board found “no showing of good and sufficient cause for opposers’ failure to prosecute this matter”); *see also* cases cited in T.B.M.P. § 534.01 and 534.02 (same).

Opposer’s failure to present any testimony or introduce any evidence in support of its case does not meet either the “good and sufficient cause” or the “excusable neglect” standard. *See Vital Pharmaceuticals Inc. v. Kronholm*, 99 USPQ2d 1708, 1711 (TTAB 2011) (no excusable neglect to reopen testimony based on purported settlement discussions). In determining whether a party’s neglect of a matter is excusable, several courts and the Board have noted that the most important factor is the reason for the delay and whether it was within the opposer’s control. *Id.* at 6-7. Here, there is no question that Opposer is the reason for the delay and that such delay was within Opposer’s control. Indeed, PK had already consented to nearly 120 days of extensions before objecting to the most recent 90-day extension request. And furthermore, PK expressly told Opposer that it would not consent to a further extension a full three (3) weeks prior to the close of Opposer’s testimony period as settlement discussions appeared to be stagnating.

Further, an opposer's excuse that it sought to settle the proceeding does not excuse an opposer’s failure to act within the prescribed times. *Id.* Thus, even if Opposer were to claim that it was relying on the ongoing negotiations, and that was the reason for its failure to prosecute the opposition, the belief in settlement and/or the existence of settlement negotiations do not justify a party's inaction or delay or excuse it from complying with the deadlines set by the Board or imposed by the rules. *See Atlanta-Fulton County Zoo Inc. v. DePalma*, 45 USPQ2d 1858, 1859 (TTAB 1998).

In view of the foregoing, PK respectfully requests that this Opposition be dismissed with prejudice under Trademark Rule 2.132(a). In the alternative, if the Board denies this Motion, PK reserves its rights to present evidence for its own case and requests that the Board reset its testimony dates, as provided in 37 C.F.R. § 2.132(a).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8TH day of August, 2018, a copy of the foregoing Motion was served via email to the following attorney of record for Opposer:

Leigh Ann Lindquist
Sughrue Mion, PLLC
2100 Pennsylvania Avenue NW
Washington, DC 20037
LLINDQUIST@SUGHRUE.COM
Phone: 202.663.7409

/Nicole Lynch/
Nicole Lynch
HOGAN LOVELLS LLP
Columbia Square
555 Thirteenth Street, NW
Washington, D.C. 20004-1109
Attorneys for Applicant
Park Hotel & Resorts Inc.