

ESTTA Tracking number: **ESTTA966149**

Filing date: **04/10/2019**

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

Proceeding	91236953
Party	Defendant H. Best Ltd.
Correspondence Address	HOWARD F MANDELBAUM LEVINE MANDELBAUM PLLC 222 BLOOMINGDALE ROAD , SUITE 203 WHITE PLAINS, NY 10605 UNITED STATES mail@levman.com 914-421-0500
Submission	Motion to Dismiss 2.132
Filer's Name	Howard F. Mandelbaum
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Signature	/Howard F. Mandelbaum/
Date	04/10/2019
Attachments	Motion2 to Dismiss.pdf(921794 bytes)

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

-----X
ALLIANCE SPORTS GROUP, L.P. :

 Opposer, :

 v. : Opposition No. 91236953 (parent)
 91238144
H. BEST LTD. :

 : App. Ser. No. 87/435,491
 87/435,561
 APPLICANT
-----X

SECOND MOTION TO DISMISS FOR FAILURE TO
TAKE TESTIMONY UNDER 37 C.F.R. §2.132

Applicant moves, again, for dismissal of the opposition under 37 C.F.R. §2.132 for failure of the Opposer to take testimony.

On September 14, 2019, Applicant moved to dismiss on the grounds that, since the filing of its Notice of Opposition, Opposer had taken no action to prosecute the opposition, had taken no testimony, and had served no notice of reliance. Opposer argued that while seeking to settle the opposition, it had failed to seek an extension of time to take testimony due to a docketing error. On January 22, 2019, the Board issued an order excusing the Opposer's omission, consolidating the two co-pending oppositions by the Opposer against the Applicant, and setting a new schedule with a date of April 1, 2019 for the close of Opposer's trial period.

Opposer's last effort to settle was made in an email (copy attached) sent to Applicant's attorney on the night of February 15, 2019, the Friday before the President's Day holiday, to which a response was sent on the following business day. Opposer's attorney never called to discuss settlement as proposed. No further action was taken by Opposer to reach a settlement or prosecute the consolidated oppositions. Again, opposer's trial testimony period has closed with no testimony taken, and no notice of reliance served.

In view of the foregoing, dismissal under 37 CFR §2.132 is believed appropriate and is, again, respectfully requested.

Respectfully submitted,

/Howard F. Mandelbaum/
Howard F. Mandelbaum
Attorney for Applicant
Levine Mandelbaum PLLC
222 Bloomingdale Road
Suite 203
White Plains, NY 10605
(914) 421-0500

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing Second Motion to Dismiss for Failure to Take Testimony under 37 C.F.R. §2.132 has been forwarded April 10, 2019 by email to:

Peter M De Jonge
Thorpe North & Western LLP
175 South Main Street, Suite 900
Salt Lake City, Ut 84111

at

dejonge@tnw.com
alexandra.thomas@tnw.com
ian.wang@tnw.com
litigation@tnw.com
Kurt.Hendricks@tnw.com (courtesy copy)

Howard F. Mandelbaum/
Howard F. Mandelbaum

Howard Mandelbaum

From: Howard Mandelbaum
Sent: Tuesday, February 19, 2019 3:15 PM
To: 'Kurt Hendricks'
Subject: RE: Alliance Sports Group, L.P. v. H., Best Ltd. Cancellation Proceedings for SOLAR DRI;
Our Ref: JACQ2400US

Hello Kurt,

You can call me any time except Thurs. morning this week.

Regards

Howard

Howard F. Mandelbaum
Mandelbaum Silfin Economou LLP
222 Bloomingdale Road, Suite 120
White Plains, NY 10605
Tel: (914) 421-0500 X102
Direct: (914) 432-2019,
Fax: (914) 840-1234
hmandelbaum@msellp.com

From: Kurt Hendricks <Kurt.Hendricks@tnw.com>
Sent: Friday, February 15, 2019 9:05 PM
To: howard.mandelbaum@levman.com
Cc: Peter deJonge <DeJonge@tnw.com>; Kaelynn Moultrie <Kaelynn.Moultrie@tnw.com>
Subject: Alliance Sports Group, L.P. v. H., Best Ltd. Cancellation Proceedings for SOLAR DRI

Hi Howard,

Attached please find Alliance Sports Group's Pretrial Disclosures.

Please let me know when would be a good time to reach you to discuss settlement.

Regards,

Kurt Hendricks • REGISTERED PATENT ATTORNEY
Thorpe North & Western | [801.566.6633](tel:801.566.6633) | tnw.com

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