

ESTTA Tracking number: **ESTTA989728**

Filing date: **07/23/2019**

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

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|------------------------|---|
| Proceeding | 91246431 |
| Party | Plaintiff Lulu's Fashion Lounge, LLC |
| Correspondence Address | JENNIFER LEE TAYLOR MORRISON & FOERSTER LLP 425 MARKET STREET SAN FRANCISCO, CA 94105 UNITED STATES jtaylor@mofo.com, aphilips@mofo.com, tmdocket@mofo.com, ggabriel@mofo.com, hcheng@mofo.com 415-268-6538 |
| Submission | Motion for Discovery Sanctions |
| Filer's Name | Jennifer Lee Taylor |
| Filer's email | jtaylor@mofo.com, aphilips@mofo.com, tmdocket@mofo.com, ggabriel@mofo.com |
| Signature | /Jennifer Lee Taylor/ |
| Date | 07/23/2019 |
| Attachments | LULUGAL - Motion for Sanctions.pdf(339488 bytes) |

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

LULU'S FASHION LOUNGE, LLC,

Opposer,

vs.

HONGKONG YINGHUI INTERNATIONAL
TRADING CO.,

Applicant.

Opposition No.: 91246431

Application Serial No.: 88/053,110

Mark: LULUGAL (stylized)

Published: January 15, 2019

MOTION FOR SANCTIONS

Pursuant to 37 C.F.R. §2.120(h) and Federal Rule of Civil Procedure 37, Opposer Lulu's Fashion Lounge, LLC ("Opposer") respectfully submits this motion for sanctions against Applicant Hongkong Yinghui International Trading Co., Limited ("Applicant") for failure to comply with a discovery order. Opposer requests that the Board issue the sanction of judgment in favor of Opposer, refusing registration of Application Serial No. 88/053,110.

I. APPLICANT HAS FAILED TO COMPLY WITH A BOARD ORDER

On May 8, 2019, Interlocutory Attorneys Geoffrey McNutt and Rebecca Stempien Coyle participated in the parties' discovery conference where, among the topics discussed, was Applicant's location outside of the United States, and how discovery should be conducted in light of that fact. *See* TTABVUE at 7. The following day, the Board entered an Order requiring Applicant, within thirty days of the Order, to "inform Opposer in writing if it has offices in the United States, and whether any corporate officers, individuals listed in Applicant's initial disclosures, or individuals knowledgeable about the pleaded issues in this case will be travelling in the United States over the next six months and thus would be available for a discovery

deposition.” *Id.* The deadline fell on June 10, 2019. Applicant did not send the required information to Opposer by that deadline.

On Wednesday, June 26, 2019, Opposer reminded Applicant of the Order and requested it provide the required information by Monday, July 1, 2019. (*See* Declaration of Amanda D. Phillips in Support of Motion for Sanctions, ¶ 2.) Applicant did not respond. Further, Applicant has still not provided the required information. (*Id.* at ¶ 3.)

II. ISSUING A DEFAULT JUDGMENT AGAINST APPLICANT IS AN APPROPRIATE SANCTION FOR FAILURE TO COMPLY WITH A BOARD ORDER

The Board may impose any of the sanctions provided in Trademark Rule 2.120(h) and Federal Rule of Civil Procedure 37(b)(2) for failure to comply with a Board discovery order, which includes entry of judgment. *See* T.B.M.P. § 527.01(a). Unlike a motion to compel, Opposer is under no obligation to make a good-faith effort to resolve the parties’ dispute before filing the instant motion. *See HighBeam Mktg. LLC v. HighBeam Research LLC*, 85 U.S.P.Q.2d 1902, 1904 (T.T.A.B. Jan. 23, 2008). Nonetheless, Opposer did contact Applicant on June 26 to remind it of the deadline and request the information. Opposer’s failure to respond in any way shows contempt for the Order, not an unawareness of its obligations as it filed its Answer to Opposer’s Amended Notice of Opposition just six days before Opposer contacted it. (*See* TTABVUE at 9.)

Accordingly, the Board should order judgment in favor of Opposer, and refuse registration of Application Serial No. 88/053,110.

Respectfully submitted,

Dated: July 23, 2019

By: /s/ Jennifer Lee Taylor
Jennifer Lee Taylor
Attorney for Opposer
Lulu's Fashion Lounge, LLC

Morrison & Foerster LLP
425 Market Street
San Francisco, California 94105-2482
Telephone: (415) 268-6538
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LULU'S FASHION LOUNGE, LLC,

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HONGKONG YINGHUI INTERNATIONAL
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Opposition No.: 91246431

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**DECLARATION OF AMANDA D. PHILLIPS IN SUPPORT OF
OPPOSER'S MOTION FOR SANCTIONS**

I, Amanda D. Phillips, declare as follows:

1. I am an associate with the firm of Morrison & Foerster LLP, and am one of the attorneys in this action for Opposer Lulu's Fashion Lounge, LLC. I make the following statements of my own personal knowledge and, if called as a witness, I could and would testify competently thereto.
2. On June 26, 2019, I sent an e-mail to Applicant's counsel pointing out that Applicant was in violation of the May 9, 2019 Board Order requiring Applicant, within thirty days of the Order, to "inform Opposer in writing if it has offices in the United States, and whether any corporate officers, individuals listed in Applicant's initial disclosures, or individuals knowledgeable about the pleaded issues in this case will be travelling in the United States over the next six months and thus would be available for a discovery deposition." I requested that Applicant provide the required information by no later than July 1, 2019. A true and correct copy of that email is attached here as **Exhibit A**.
3. Applicant never responded to my June 26 email or sent the information required under the Order.

I declare under penalty of perjury under the laws of the United States and the State of California that the above is true and correct.

Executed in San Francisco, California, this 23rd day of July, 2019

/s/ Amanda D. Phillips
Amanda D. Phillips

EXHIBIT A

Phillips, Amanda D.

From: Phillips, Amanda D.
Sent: Wednesday, June 26, 2019 2:31 PM
To: Francis Ciaramella
Cc: Taylor, Jennifer Lee (SF)
Subject: Lulu's Fashion Lounge v. Hongkong Yinghui International Trading [64861-6001.502]

Dear Frances,

According to the Board's order of May 9, Applicant was obligated to inform us by June 10 if it has offices in the United States, and whether any corporate officers, individuals listed in Applicant's initial disclosures, or individuals knowledgeable about the pleaded issues in this case will be travelling in the United States over the next six months and thus would be available for a discovery deposition.

As that information is now over 2 weeks overdue, please confirm that you will provide that information by Monday.

Thanks,

Amanda

AMANDA PHILLIPS

Associate | Morrison & Foerster LLP
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PROOF OF SERVICE BY EMAIL

I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California, 94105; I am not a party to the within cause; I am over the age of eighteen years and I am readily familiar with Morrison & Foerster's practice for collection and processing of correspondence by electronically mailing a true and correct copy through Morrison & Foerster LLP's electronic mail system from APhillips@mof.com to the email address(es) set forth below.

I further declare that on July 23, 2019 I served a copy of:

MOTION FOR SANCTIONS

DECLARATION OF AMANDA D. PHILLIPS IN SUPPORT OF OPPOSER'S MOTION FOR SANCTIONS

by electronically mailing a true and correct copy through Morrison & Foerster LLP's electronic mail system from APhillips@mof.com to the email address set forth below:

Francis John Ciaramella
RICK RUZ PLLC
7355 SW 87th Avenue, Suite 200
Miami, FL 33173
francis@ruzlaw.com

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at San Francisco, California, this 23rd day of July, 2019.

Amanda Phillips
(typed)


(signature)