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

Proceeding	91247390
Party	Plaintiff Mission Product Holdings, Inc.
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Date	01/11/2021
Attachments	Mission - Response to OSC _ Motion to Reopen re MISSION BOUND - FINAL .DOCX.pdf(101945 bytes)

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

Mark: MISSION BOUND
Serial No.: 88146617

Mission Product Holdings, Inc.,

Opposer,

- v -

Mission Bound, LLC,

Applicant.

Opposition Proceeding No. 91247390

RESPONSE TO ORDER TO SHOW CAUSE / MOTION TO REOPEN

Proposed New Party Plaintiff/Opposer MPUSA, LLC¹ (“Proposed Opposer”) hereby submits its response to the Order to Show Cause (the “Order”) dated December 10, 2020 issued by the Trademark Trial and Appeal Board (“Board”), showing cause for why judgment dismissing the subject opposition should not be entered. Proposed Opposer also hereby moves for an order reopening its testimony period and time to file its main brief and resetting the remaining deadlines to allow conclusion of the trial period of this matter, or, alternatively, for an order reopening solely Proposed Opposer’s time to file its main brief and resetting the remaining deadlines.²

¹ On December 22, 2020, Proposed Opposer filed its Motion to Substitute Plaintiff with Notice of Appearance, requesting that the party plaintiff in the subject proceedings be substituted from Mission Product Holdings, Inc. to MPUSA, LLC pursuant to TBMP § 512.01. (*See* Docket No. 9.)

² Proposed Opposer hereby informs that Board that it has reached a settlement in principle with Applicant Mission Bound, LLC which when finalized would result in the Opposition being withdrawn. Proposed Opposer and Applicant are working to reduce the agreement in principle to writing. The Motion to Reopen herein is being made, so in the unlikely event that a settlement cannot be quickly achieved, Proposed Opposer would have the opportunity to present its case since there was no intention to not pursue these proceedings.

Proposed Opposer respectfully requests that the Order be discharged because it remains interested in the subject proceedings. Proposed Opposer made an inadvertent oversight in failing to file its main brief due to the previous suspension of the proceedings for the purpose of settlement discussions, as well as the change in ownership of the pleaded registrations in the Notice of Opposition, and the change in its counsel that occurred around the time the suspension was lifted and the proceedings resumed.

Specifically, when the Notice of Opposition was filed on April 3, 2019 (Docket No. 1), Mission Product Holdings, Inc., the current party plaintiff in these proceedings, owned the pleaded U.S. Patent and Trademark Office (“USPTO”) registrations, namely, USPTO Reg. Nos. 2323531, 5028960, and 5525378 (collectively, the “Pleaded Trademark Registrations”). In or around June and early July 2019, Mission Product Holdings, Inc. and Mission Bound, LLC (the “Applicant”) were engaged in settlement negotiations in an attempt to resolve their dispute. Accordingly, on July 8, 2019, Mission Product Holdings, Inc. filed a Consent Motion for Suspension for Settlement, stating that the parties were “actively engaged in negotiations for the settlement of this matter” and requesting that the “proceeding be suspended for 60 days to allow the parties to continue their settlement efforts.” (*See* Docket No. 6.) That day, the Board granted the consent motion and stated that the proceedings would resume on September 7, 2019. (*See* Docket No. 7).

Subsequently, on September 11, 2019, Mission Product Holdings, Inc. transferred ownership of the Pleaded Trademark Registrations to Proposed Opposer, pursuant to the Trademark Assignment recorded in the USPTO at Reel/Frame 6387-0901, a copy of which was attached to the Motion to Substitute Plaintiff with Notice of Appearance that was filed with the Board on December 22, 2020. (*See* Docket No. 9.) Proposed Opposer is represented by

different counsel than the counsel that represented the current party plaintiff, Mission Product Holdings, Inc.

Proposed Opposer and Applicant recently reached a settlement in principle of the present dispute, but, as noted above, for the present time Proposed Opposer has an active interest in this case and would need to obtain an adjudication on the merits if the settlement is not finalized. To that end, Proposed Opposer is moving to reopen its testimony period and/or time to file a main brief, as discussed below.

Proposed Opposer therefore respectfully submits that it has shown good cause for failure to file its main brief and requests that the Board discharge the Order. *See* TBMP § 536 (“It is not the policy of the Board to enter judgment against a plaintiff for failure to file a main brief on the case if the plaintiff still wishes to obtain an adjudication of the case on the merits. If a show cause order is issued under 37 C.F.R. § 2.128(a)(3), and the plaintiff files a response indicating that it has not lost interest in the case, the show cause order will be discharged by Board order, and judgment will not be entered against plaintiff based on the presumption of lack of interest stemming from its failure to file a main brief.”)

In addition, pursuant to TBMP § 509.01(b)(1), Proposed Opposer moves the Board for an order reopening its testimony period and time to file a main brief and resetting the remaining deadlines to allow conclusion of the trial period of this matter or, alternatively, for an order reopening Proposed Opposer’s time to file a main brief and resetting the remaining deadlines.

TBMP § 509.01(b)(1) provides that an expired time period may be reopened where the movant shows that “its failure to act during the time previously allotted therefor was the result of excusable neglect.” The determination of whether there is excusable neglect requires consideration of “all relevant circumstances surrounding the party’s omission or delay, including

(1) the danger of prejudice to the nonmovant, (2) the length of the delay and its potential impact on judicial proceedings, (3) the reason for the delay, including whether it was within the reasonable control of the movant, and (4) whether the movant acted in good faith.” TBMP § 509.01(b)(1).

Here, Proposed Opposer’s inaction in submitting trial evidence during its testimony period and filing its main brief was the result of excusable neglect. Proposed Opposer believes there would not be a material danger of prejudice to Applicant and its ability to litigate the case caused by the delay in the proceedings because resetting the remaining deadlines in this matter would effectively reopen Applicant’s own testimony period and/or time to file its own main brief. Further, the delay occurred because Proposed Opposer made an inadvertent oversight, due to the prior suspension of the subject proceedings for the purpose of settlement discussions, as well as the change in the party plaintiff to Proposed Opposer and the change in its counsel at the time that the proceedings resumed, as explained above. Proposed Opposer has also acted in good faith.

WHEREFORE, Proposed Opposer requests that this Board (i) discharge the Order and not enter judgment dismissing the subject opposition, and (ii) issue an order reopening Proposed Opposer’s testimony period and time to file a main brief and resetting the remaining deadlines to allow conclusion of the trial period of this matter or, alternatively, for an order solely reopening Proposed Opposer’s time to file a main brief and resetting the remaining deadlines.

Dated: January 11, 2021
New York, New York

Respectfully submitted,

DAVIS & GILBERT LLP

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CERTIFICATE OF SERVICE

I hereby certify that, on January 11, 2021, a true copy of the foregoing Response to Order to Show Cause / Motion to Reopen was served by email upon counsel for Applicant Mission Bound, LLC at the following address:

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Dated: New York, New York
January 11, 2021

Respectfully submitted,

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