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

Proceeding	91248073
Party	Defendant Patchell Holdings Inc.
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Date	05/01/2020
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re the Matter of:

GOOD LIFE FITNESS CENTER, LLC, Opposer, v. PATCHELL HOLDINGS INC., Applicant.	**Opposition No. 91248073** **Mark: GOODLIFE FITNESS** **Serial No. 88082384**

APPLICANT'S MOTION FOR JUDGMENT UNDER TRADEMARK RULE 2.132(a)

Applicant Patchell Holdings Inc. ("Applicant"), by and through its attorneys, hereby moves pursuant to Trademark Rule 2.132(a) for judgment on the grounds that Opposer, Good Life Fitness Center, LLC ("Opposer") has filed to prosecute its case. Opposer has allowed its testimony period to expire, and has not served or filed any testimony or evidence in support of its allegations in the Notice of Opposition. Accordingly, Opposer has shown no right to relief, and the proceeding should be involuntarily dismissed with prejudice.

I. BACKGROUND

On May 8, 2019, Opposer filed a Notice of Opposition to Applicant's Trademark Application, Serial No. 88082384 filed on August 17, 2018 for the mark GOODLIFE FITNESS (stylized) in IC 041 for various types of fitness and athletic services. Opposer based its opposition upon an alleged likelihood of confusion with Opposer's common law mark and trade name GOOD LIFE FITNESS CENTER used in connection with various fitness and exercise services and its ownership of two pending applications filed on August 17, 2018 for GOOD

LIFE FITNESS CENTER (Serial No. 88082695) and G GOOD LIFE FITNESS CENTER + Design (Serial No. 88082740). TTABVUE No. 1 at 5-6.

On May 9, 2019, the Board issued its scheduling order in this proceeding setting June 18, 2019 as the deadline for Applicant to file its answer, July 18, 2019 as the deadline for the discovery conference, August 17, 2019 as the deadline for initial disclosures, a close of discovery date of January 14, 2020, Plaintiff's pretrial disclosure deadline of February 28, 2020, and the end of Plaintiff's 30-day trial period of April 13, 2020. TTABVUE No. 2 at 3.

On June 17, 2019, Applicant filed and served its answer and a notice of appearance by its attorneys. TTABVUE Nos. 4 and 5. Opposer did not hold a discovery conference with Applicant, or serve initial disclosures or discovery on Applicant despite Applicant's communications regarding both. *See* Affirmation of Adam Sgro in Support of Applicant's Motion to Strike Opposer's Notice of Opposition and Dismiss the Proceeding for Failure to Prosecute, dated November 20, 2019. TTABVUE 6. Applicant previously moved to dismiss the proceeding on those grounds but the Board denied the motion as untimely in an order dated December 9, 2019. *See* TTABVUE 7. The Board's prior scheduling order remained the same. *Id.* Subsequent to the Board's denial of opposer's motion to dismiss, Opposer did not take discovery, serve pretrial disclosures on Applicant, or submit any testimony during its trial period.

II. Dismissal of the Opposition is Proper Given Opposer's Failure to Prosecute

Trademark Rule 2.132(a) provides that a party may obtain a voluntary dismissal for failure to prosecute an opposition when the opposer does not take any testimony or offer any evidence during opposer's trial period. Rule 2.132(a) states in part: "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." Rule 2.132 is designed to save the applicant from the expense and delay of continuing with a proceeding when the opposer has failed to prosecute its case. *See* TBMP 534.02; *Sterling Jewelers Inc. v. Romance & Co., Inc.*, 110 U.S.P.Q.2d 1598 (T.T.A.B. 2014) (precedential). Moreover, any allegations and specimens contained in Opposer's claimed applications were not properly made of record in this proceeding. *See Stoked Coffee LLC v. Stoked Roasters + Coffeehouse, LLC*, Proceeding No. 92066145, at n. 2 (July 10, 2018 T.T.A.B.) (petitioner's pleaded applications that formed the basis of its petition to cancel could not be made of record under Trademark Rule 2.122(b) by including them in the petition and could only be made of record by submitting them during the trial period). Despite filing this Opposition, Opposer has declined to, in any way, participate in this proceeding by failing to establish standing, use of its alleged marks, or priority over Applicant's application. Opposer has not submitted any evidence of any kind, including on its claim of likelihood of confusion between the marks at issue.

III. Conclusion

In summary, absent testimony or other evidence from Opposer to support the allegations in its Notice of Opposition, Opposer has failed to meet its burden and the Board should grant applicant's Motion.

Respectfully submitted,

Date: May 1, 2020

/s/ Adam Sgro

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing motion for judgment under trademark Rule 2.132(a) has been served on Opposer this 1st day of May, 2020 by email to:

Wayne J. Colton
colton@wjci.com

By: /s/ Adam Sgro
Adam Sgro