UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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LTS

February 7, 2020

Opposition No. 91252380

New York University

v.

ZhiWe Song

Lawrence T. Stanley, Jr., Interlocutory Attorney:

On November 14, 2019, Opposer filed a notice of opposition against Applicant's application Serial Nos. 88503034 and 88513834. 1 TTABVUE. As set in the Board's order of November 19, 2019, Applicant's deadline to file an answer in this proceeding was December 29, 2019. 2 TTABVUE 3. On January 8, 2020, the Board issued a notice of default due to Applicant's failure to timely file an answer to the notice of opposition or a motion to extend his time to answer. 4 TTABVUE. The Board allowed Applicant thirty days in which to show cause why default judgment should not be entered against him. *Id.*

On January 9, 2020, Applicant filed a document titled "Abandonment of Trademark Application and Consent." 5 TTABVUE. In that submission, "Applicant … expressly abandons the above-identified application … without prejudice[,]" and the "above-identified application" is listed in the caption as "Serial No.: 88503034."

Id. at 2. The same day, Opposer filed a response to Applicant's abandonment, stating that it did not consent to the withdrawal, and therefore the abandonment must be "with prejudice." 6 TTABVUE 2.

There are multiple issues with Applicant's submission. First, Applicant's filing does not include proof of service. Trademark Rule 2.119(a) states that every submission filed in an inter partes proceeding must be served upon the other party or parties, and proof of such service must be made before the submission will be considered. *See* TBMP § 113.02 (2019). The Board may decline to read or consider any future submission filed by Applicant in this proceeding which does not include proof of service.

Second, Applicant titled its withdrawal as one based on "consent," but Opposer has informed the Board that it did not consent to the withdrawal. A "consent" motion may not be filed unless the filing party has the actual consent of the adverse party to file such a motion.

Third, Opposer has opposed two of Applicant's applications, Serial Nos. 88503034 and 88513834; yet, the abandonment only identifies one application (i.e., Serial No. 88503034), and Applicant did not otherwise respond to the notice of default as to application Serial No. 88513834.

In view of the above, Applicant is allowed until **twenty days** from the date of this order to refile his notice of withdrawal of the application(s) and/or otherwise show cause why judgment by default should not be entered against him in accordance with Fed. R. Civ. P. 55(b)(2). If Applicant intends to abandon both of the involved

applications, he should state so in the submission. If Applicant only intends to abandon one of the involved applications, he must show cause why default judgment should not be entered against him as to the other involved application. Applicant should not label his motion as being on "consent" unless he has the actual consent of Opposer to file such a motion. Lastly, the submission should be served by email on Opposer and include a proof of service consistent with Trademark Rule 2.119.

Proceedings otherwise remain **suspended**.