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

Proceeding	91264651
Party	Plaintiff Primozone Production AB
Correspondence Address	FARAH P. BHATTI BUCHALTER, A PROFESSIONAL CORPORATION 18400 VON KARMAN AVE., SUITE 800 IRVINE, CA 92612 UNITED STATES Primary Email: fbhatti@buchalter.com Secondary Email(s): ipdocket@buchalter.com 949-224-6272
Submission	Opposition/Response to Motion
Filer's Name	Farah P. Bhatti
Filer's email	fbhatti@buchalter.com, ipdocket@buchalter.com, hblan@buchalter.com
Signature	/fbhatti/
Date	12/15/2020
Attachments	Opposition to Applicant Response to Notice of Default - PRIMESONS.pdf (26057 bytes)

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

Primozone Production AB, Opposer, vs. Nivika Ankur Agarwal Trading As Primesons Individual, Applicant.	Opposition No. 91264651 Serial No. 79/263177 Mark: PRIMESONS

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

OPPOSITION TO APPLICANT'S RESPONSE TO A NOTICE OF DEFAULT

Opposer Primozone Production AB ("Opposer") opposes Nivika Ankur Agarwal Trading As Primesons ("Applicant') Response to a Notice of Default and for leave to file a late answer (the "Motion"). As discussed herein, Applicant has failed to show good cause to allow the Trademark Trial and Appeal Board to set aside the Notice of Default pursuant to Fed.R.Civ.P 55(c) and TBMP §312.02 and has misrepresented the status of the United States Patent and Trademark Office Operations during this time period in its Motion. Opposer thus requests that the Motion be denied, and default judgment be entered.

Background

The parties, through their European counsel, have been engaged in negotiations. However, the parties, contrary to Applicant's assertions, did not have a "possible settlement."

Rather, the parties continue to negotiate. European counsel was guiding Applicant in the negotiations and should have been aware of the U.S. opposition that had been filed by Opposer in the U.S. The fact that the parties were negotiating does not excuse Applicant's obligation to file an Answer in the U.S. as the settlement negotiations themselves do not toll the opposition deadlines.

Applicant Has Failed to Show Good Cause

An entry of default may be set aside upon a showing of good cause. Fed.R.Civ.P.55(c); TBMP §312.02. Applicant, however, has failed to meet even this low standard. *See DeLorme Publishing Co. v. Eartha's Inc.*, 60 USPQ2d 1222, 1224 (TTAB 2000) (although no prejudice to opposer was shown, and while meritorious defense was shown, Board granted motion for default judgment where applicant filed its answer six months late).

Applicant has not claimed that service was improper or that it did not receive notice of the Opposition, nor has Applicant asserted any excuse that courts commonly accept as a showing of "good cause." Applicant was aware of the October 19, 2020 deadline to file an Answer but did not file an answer believing that ongoing negotiations with Opposer did not require such a filing. This was an incorrect legal conclusion on the part of Applicant and is not an excuse to not timely file an Answer. In other words, this was not "good cause."

Moreover, Applicant claims that its business was impacted by COVID-19 and cites the worldwide case numbers and deaths to justify its lack of filing a response. Opposer notes that even with the COVID-19 situation, Applicant was engaged in settlement discussions with Opposer and was actively participating in the same so there was no real disruption to Applicant's business. Moreover, Applicant claims that the "Federal and State governments have engaged in

rolling shutdowns of the economy, which has prevented people from working….Courts have also been closed across the country, and deadlines postponed by months, including for the USPTO."

Opposer notes that while COVID-19 has impacted several sectors and businesses, it has not impacted the USPTO or the deadlines set forth by the Trademark Trial and Appeal Board. In fact, all deadlines for the USPTO have remained the same and the USPTO has not shut down its operations during this time. Applicant's claim that the USPTO has postponed deadlines is false, and does not justify or provide "good cause" for Applicant's late filing. If Applicant's business had indeed shut down, it would not have continued its negotiations with Opposer during this time.

Applicant's excuse that it did not file an Answer because it was in negotiations with Opposer and due to the supposed postponement of deadlines by the USPTO is analogous to the Applicant's failed excuse in *DeLorme* that it thought the opposer's filing was incomplete. As the Board said in that instance, "at the very least, [the applicant] could have contacted the Board…by telephone or in writing to inquire" about the issue. *DeLorme* at 1223 (emphasis in original). In this instance, Applicant could have contacted the Board if it believed that the deadlines had been postponed to confirm the response dates. However, here, Applicant willfully and intentionally failed to respond on time as is set forth in its Motion and is now asking the Board to consider its excuses, which do not show "good cause" in order to have the Board accept its answer.

Here, it is obvious that Applicant's failure to timely file an answer was a result of willful conduct and/or gross neglect. Applicant cites *Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 221 USPQ2d 1556, 1557 (TTAB 1991) stating that applicant's counsel had prepared an answer which had been reviewed by the Applicant but counsel inadvertently failed

to file it. Citing this case is irrelevant – these are not the facts of the instant case. Here, Applicant was clearly aware of the deadline. Applicant took no steps to prepare and timely file an Answer. Instead, Applicant would like the Board to believe that even though it was negotiating with Opposer's counsel in Europe, it was affected by COVID-19 in a manner that prevented it from somehow responding to the U.S. opposition, even though the USPTO was not closed and did not postpone any deadlines. Applicant's conduct with either willful or gross neglect. It appears that Applicant is playing games and thus Opposer believes that it will be prejudiced by the granting of the Motion as Applicant will use the U.S. opposition to lengthen any potential settlement discussions between the parties.

The facts do not support a conclusion that Applicant has good cause to set aside default. Consequently, Opposer requests that the Motion be denied.

Date: December 15, 2020

Respectfully Submitted,

/fbhatti/

Farah P. Bhatti, Esq.
Buchalter, a Professional Corporation
18400 Von Karman Ave., Suite 800
Irvine, CA 92612
Phone: (949) 224-6272
Email: fbhatti@buchalter.com
ipdocket@buchalter.com

ATTORNEYS FOR OPPOSER
Primozone Production AB

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served via email to Applicant's attorney of record at the address below on December 15, 2020

nyall@trademarkraft.com

/fbhatti/
Farah P. Bhatti