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Filing date: **06/21/2022**

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

Proceeding no.	91273187
Party	Plaintiff Pacific Sunwear of California, LLC
Correspondence address	PAMELA N HIRSCHMAN SHERIDAN ROSS PC 1560 BROADWAY, SUITE 1200 DENVER, CO 80202 UNITED STATES Primary email: phirschman@sheridanross.com Secondary email(s): ahartman@sheridanross.com, docketing@sheridanross.com, mtrudell@sheridanross.com 303-863-9700
Submission	Motion for Default Judgment
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Signature	/Autumn R. Hartman/
Date	06/21/2022
Attachments	2022.06.21 Modified Motion for Default Judgment.pdf(130554 bytes)

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

In the Matter of Trademark Application Serial No. 90/503,209
Filed on February 1, 2021
For the mark "PASHUN LIFESTYLE"
Published in the *Official Gazette* on October 5, 2021

Pacific Sunwear of California, LLC)	
)	
Opposer,)	
)	
v.)	Opposition No. 91273187
)	
Pashun Products Ltd.)	
)	
Applicant.)	
)	

OPPOSER’S MODIFIED MOTION FOR DEFAULT JUDGMENT

Pacific Sunwear of California, LLC (“Opposer”) hereby submits Opposer’s Modified Motion for Default Judgment. Opposer’s Motion for Default Judgment was filed with the Trademark Trial and Appeal Board (the “Board”) on June 15, 2022. (ttabvue-91273187-OPP-17). However, Opposer inadvertently filed to serve Opposer’s Motion for Default Judgment on Pashun Products Ltd. (“Applicant”) on June 15, 2022. Therefore, Opposer is filing Opposer’s Modified Motion for Default Judgment to rectify Opposer’s inadvertent failure to serve Opposer’s Motion for Default Judgment on Applicant.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this June 21, 2022, a true and correct copy of the foregoing OPPOSER'S MODIFIED MOTION FOR DEFAULT JUDGMENT was emailed to the address below:

APPLICANT

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)	
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Pursuant to 37 CFR § 2.11(a), Pacific Sunwear of California, LLC ("Opposer"), hereby moves that a Default Judgment be entered against Pashun Products Ltd. ("Applicant") for failure to comply with the Trademark Trial and Appeal Board's (the "Board") order issued on March 21, 2022 requiring that Applicant, a United Kingdom limited company domiciled in the United Kingdom, appoint U.S. counsel pursuant to 37 CFR § 2.11(a).

I. BACKGROUND

1. On November 30, 2021, Opposer filed its Notice of Opposition with the Board against U.S. Trademark Application Serial No. 90/503,209 for the mark "PASHUN LIFESTYLE" owned by Pashun Products Ltd. (ttabvue-91273187-OPP-1). The Board instituted the present proceedings setting forth the conference, discovery, disclosure and trial schedule on the same day. (ttabvue-91273187-OPP-2).
2. On January 5, 2022, Applicant, by and through its counsel, Sutton IP Associates, PA, filed its Answer to the Notice of Opposition. (ttabvue-91273187-OPP-4).

3. On January 25, 2022, Opposer filed a Motion to Amend the Notice of Opposition as a matter of course. (ttabvue-91273187-OPP-7). The Board issued an order resetting the trial dates for the present Opposition, setting forth a February 25, 2022 deadline for Applicant to file and serve its Answer to Opposer's Amended Notice of Opposition. (ttabvue-91273187-OPP-8).
4. On February 23, 2022, counsel for Applicant that filed the answer, Sutton IP Associates PA, filed a Motion to Withdraw as Counsel. (ttabvue-91273187-OPP-9).
5. On February 24, 2022, Applicant, on a *pro se* basis, filed an Answer to Opposer's Amended Notice of Opposition (ttabvue-91273187-OPP-10), in direct violation of 37 CFR § 2.11(a), as Applicant is domiciled in the U.K.
6. On March 21, 2022, the Board granted Sutton IP Associate PA's Motion to Withdraw as Counsel and issued an order requiring that Applicant appoint U.S. counsel by April 20, 2022 as required by 37 C.F.R. § 2.11(a). (ttabvue-91273187-OPP-11).
7. On April 17, 2022, Applicant filed a Motion to Extend the time requirement in which to appoint U.S. counsel, without the consent of Opposer, requesting a fourteen (14) day extension of time to obtain U.S. counsel on the basis that the Board's March 21, 2022 order was not received by the Applicant. (ttabvue-91273187-OPP-12).
8. On April 19, 2022, the Board granted Applicant's Motion to Extend the deadline to obtain U.S. counsel until May 4, 2022. (ttabvue-91273187-OPP-13).
9. On May 3, , 2022, Applicant filed an additional Motion to Extend the time requirement in which to appoint U.S. counsel, without the consent of Opposer, requesting an additional seven (7) days to obtain U.S. counsel on the basis that it had entered into "negotiations" with a U.S. licensed attorney that Applicant is "confident" will be "appearing on the case [as counsel for Applicant] within a few days." (ttabvue-91273187-OPP-14).

10. On May 6, 2022, Opposer filed a Response to Applicant's Motion to Extend on May 6, 2022 requesting that the Board deny all future Motions to Extend filed by the Applicant to extend the deadline to obtain U.S. counsel. (ttabvue-91273187-OPP-15).

11. On May 9, 2022, the Board granted Applicant's Motion to Extend the deadline to obtain U.S. counsel until May 16, 2022. (ttabvue-91273187-OPP-16).

12. As of the filing date of the present Motion for Default Judgment, Applicant has not appointed U.S. counsel in the present proceeding and therefore Applicant is in default of the Board's March 21, 2022 order to appoint U.S. counsel.

II. Argument

13. If a party fails to comply with an order of the Board, "the Board may make any appropriate order, including any of the orders provided in Rule 37(b)(2) of the Federal Rules of Civil Procedure" including rendering a default judgment against the party not complying with the order. 37 C.F.R. § 2.120(g)(1).

14. As stated in the Board order dated March 21, 2022 and as cited in TMBP Sec. 513.01, "foreign-domiciled parties must be represented by U.S. counsel."

15. Here, not only has Applicant not appointed U.S. counsel by the May 16, 2022 deadline set forth by the Board in its May 9, 2022 granting of Applicant's second Motion to Extend to allow Applicant additional time to appoint U.S. counsel, in the 30 days following this deadline, Applicant still has not appointed U.S. counsel.

16. As such, Applicant is in default for failure to comply with the Board's initial March 21, 2022 order requiring that Applicant appoint U.S. counsel, and is in default of 37 CFR § 2.11(a).

WHEREFORE, Opposer respectfully requests that the Board enter judgement by default against Applicant for failure to appoint U.S. counsel in the present proceeding, thereby sustaining the Opposition and refusing registration of U.S. Trademark Application Serial No. 90/503,209.

Respectfully submitted,

Date: June 21, 2022

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