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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
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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 MOTION FOR DEFAULT JUDGMENT

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, and repeated in the Board’s September 22, 2022 suspension, 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. On June 15, 2022, Opposer filed a Motion for Default Judgment requesting that the Board enter judgement by default against Applicant for failure to appoint U.S. counsel. (ttabvue-91273187-OPP-17).¹

13. On June 22, 2022, the Board issued an order requiring that Applicant respond to Opposer’s Motion for Default Judgment by July 11, 2022. (ttabvue-91273187-OPP-19).

14. On July 11, 2022, the Applicant filed a Brief in Response to Opposer’s Motion for Default Judgment requesting additional time to appoint U.S. counsel on the basis that Applicant has faced “challenges (as a small company) of finding an attorney with the suitable experience and price.” (ttabvue-91273187-OPP-20).

15. Opposer filed a Reply Brief in response to Applicant’s Brief on July 20, 2022 requesting that the Board enter default judgment in favor of Opposer in light of Applicant’s failure to appoint U.S. counsel in compliance with the Board’s March 21, 2022 order requiring that Applicant appoint U.S. counsel. (ttabvue-91273187-OPP-21).

¹ Opposer filed a Modified Motion for Default Judgment on June 21, 2022 to rectify Opposer’s inadvertent error to serve Opposer’s June 15, 2022 Motion for Default Judgment on Applicant. (ttabvue-91273187-OPP-18).

16. On September 22, 2022, the Board suspended the present proceeding and extended the deadline for Applicant to obtain U.S. counsel until October 31, 2022. (ttabvue-91273187-OPP-22).

17. In the Board's September 22, 2022 order, the Board states the following: "*Applicant will not be permitted any extensions of time to comply without first obtaining and filing with the Board Opposer's written consent thereto. The burden of complying with this order lies with Applicant. If Applicant does not comply, judgment will be entered against it upon motion by Opposer.*" (Emphasis added). (ttabvue-91273187-OPP-22).

18. As of the filing date of the present Motion for Default Judgment, which is subsequent to October 31, 2022, Applicant has not appointed U.S. counsel in the present proceeding and is therefore in default of the Board's March 21, 2022 order requiring that Applicant appoint U.S. counsel and in default of the Board's suspension dated September 22, 2022.

II. Argument

19. 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."

20. Here, not only has Applicant not appointed U.S. counsel by the October 31, 2022 deadline set forth by the Board in its September 22, 2022 suspension allowing Applicant a third extension of the deadline to obtain U.S. counsel, Applicant still has not appointed U.S. counsel as of the filing date of this motion.

22. In the Board's September 22, 2022 order, the Board states the following: "Applicant will not be permitted any extensions of time to comply without first obtaining and filing with the Board Opposer's written consent thereto. The burden of complying with this order lies with Applicant.

If Applicant does not comply, judgment will be entered against it upon motion by Opposer. As Applicant has not complied 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), Opposer respectfully requests judgment be entered in Opposer's favor.

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: November 8, 2022

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this November 8, 2022, a true and correct copy of the foregoing OPPOSER’S MOTION FOR DEFAULT JUDGMENT was emailed to the address below:

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