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

Proceeding no.	91277527
Party	Defendant JC Master Distribution Limited
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Submission	Motion for Discovery Sanctions
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Signature	/erh/
Date	06/26/2024
Attachments	ZAYA v RAYA MOTION FOR SANCTIONS 062624.pdf(196721 bytes) ZAYA RAYA mot for sanctions exh_Redacted.pdf(89481 bytes)

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

INFINIUM SPIRITS INC., *Opposer*, v. JC MASTER DISTRIBUTION LIMITED, *Applicant*	Opposition No. 91277527

APPLICANT'S MOTION FOR SANCTIONS

Pursuant to 37 C.F.R. §2.120(h), Applicant, JC Master Distribution Limited, hereby moves the Board to issue an Order sanctioning Opposer, Infinium Spirits Inc., for its failure to comply with the Board Order compelling Opposer to respond to discovery. As of the date of this Motion, Opposer has not served any responses, produced any documents, nor provided Applicant with any excuse, reasonable or otherwise, regarding its failure to respond to discovery. Accordingly, it is respectfully requested that this Motion be granted, and judgement entered against Opposer, for the reasons set forth below.

Statement of Facts

On October 24, 2023, Applicant timely served Discovery Requests on Opposer. Pursuant to 37 C.F.R. §2.120(a)(3), Opposer's responses were due on or before November 24th. No responses were received by Applicant. Pursuant to its discovery obligations set forth in 37 C.F.R. §2.120(f), Applicant made good faith efforts to obtain Opposer's overdue responses. Despite Applicant's attempts, Opposer did not respond. On January 8, 2024, Applicant filed a Motion to Compel Discovery. 14 TTABVUE. On February 6, 2024, the Board issued an Order

granting the Motion and provided Opposer thirty days to provide full and complete responses to Discovery. 16 TTABVUE 1-2. Opposer never corresponded with Applicant regarding the Board Order, nor did it serve responses by the deadline. Applicant followed up with Opposer via email on March 22nd, April 2nd, April 12th, and April 22nd but never received a reply. Although the Parties were discussing the potential for settlement, terms were not finalized. Regardless, absent an extension or suspension of the proceedings, the Parties are required to meet the deadlines set forth by the Board even when negotiating for settlement. Accordingly, in order to comply with the trial dates as re-set in the Board's February 6th Order, Applicant served Pre-Trial Disclosures on Opposer on May 14th. Applicant submits copies of the foregoing emails to Opposer in order to show Applicant's repeated attempts to resolve the outstanding issues and Opposer's willful disregard of its discovery obligations as well as its disregard of the proceedings in general.[1]

To date, Opposer has not: (i) served Initial Disclosure or Pre-Trial Disclosures on Applicant; (ii) responded to any Discovery requests nor produced any documents; (iii) provided any excuse, reasonable or otherwise, for its failure to comply with the Board Order dated February 6, 2024; nor (iv) filed a Motion for an extension of the deadlines or a suspension of the proceedings with the Board.

Applicant's Motion for Sanctions Should be Granted and Judgment Issued Against Opposer

If a party fails to comply with an order of the Board relating to discovery, the Board may enter appropriate sanctions. 37 C.F.R. §2.120(h); TBMP §527.01(a). The sanctions that may be entered by the Board *expressly include* entering judgment against the disobedient party. *Id.* A default judgment is warranted where a party fails to comply with a Board Order and offers no explanation for its failure to respond to discovery. *Caterpillar Tractor Co. v. Catfish Anglers*

[1] Applicant also refers its Motion to Compel and related exhibits which detail Opposer's failure to serve Initial Disclosures, failure to respond to discovery, and overall failure to meet its discovery obligations. 14 TTABVUE 2-5.

Together, Inc., 194 USPQ 99, 100 (TTAB 1976) (judgment entered where applicant provided no reason for not complying with Board order compelling discovery). *See also*, *Fifth Generation Inc. v. Titomirov Vodka LLC*, 2019 USPQ2d 418666, at *5-6 (TTAB 2019) (judgment as a sanction granted under Trademark Rule 2.120(h) for failure to comply with Board orders); *SFM, LLC v. Corcamore, LLC*, 129 USPQ2d 1072, 1075-79 (TTAB 2018) (motion for judgment under Trademark Rule 2.120(h)(1) granted as sanction for discovery abuses and egregious conduct), *aff'd,* 978 F.3d 1298, 2020 USPQ2d 11277 (Fed. Cir. 2020), *cert. denied,* 141 S. Ct. 2671 (2021). Although a default judgment may be viewed as a "harsh remedy," it is justified "where no less drastic remedy would be effective and there is a strong showing of willful evasion." TBMP §527.01(a). Applicant does not believe that Opposer's lack of compliance is due to excusable neglect, but rather is indicative of Opposer's unwillingness to comply with the Board's Order and to prosecute the proceeding in general. Opposer has had more than sufficient time to fulfill its discovery obligations and/or request an extension of the trial deadlines, yet has remained deficient in doing so.

Moreover, Opposer's failure to comply with the Board Order has unfairly prejudiced Applicant. Applicant has spent valuable resources in connection with this proceeding including serving disclosures and discovery requests, and engaging in Motion practice. Additionally, Applicant has been deprived of the information and documentation sought in discovery that is relevant to its defenses herein. In contrast with Applicant's conceded efforts, Opposer appears to have no interest in this proceeding despite the fact that it was filed on its behalf.

Since the inception of this proceeding, Applicant has been met with continuous delays on the part of Opposer. As a result, Applicant has been unable to obtain registration of the contested application. Accordingly, Applicant has been, and continues to be, unduly prejudiced

by Opposer's extreme delays and continued failure to cooperate with the Discovery process including the Board's Order. Applicant is now days away from the close of its trial period. As it is illogical and unreasonable for Applicant to attempt to submit its evidence without having been able to review Opposer's discovery responses, Applicant has no choice but to file this Motion for Sanctions. In consideration of Opposer's actions, including its failure to prosecute this case, the Board should not now allow Opposer to move forward with the proceeding but rather should sanction Opposer in the form of a default judgement.

Conclusion

For the foregoing reasons, it is respectfully requested that the Board grant this Motion for Sanctions and enter judgment against Opposer. It is simultaneously requested that the instant proceedings be suspended until after this Motion is resolved.

Respectfully submitted,

Date: June 26, 2024
New York, New York

By 

ERICA R. HALSTEAD
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New York, New York 10022
Erica.halstead@wbd-us.com
Attorneys for Applicant

Attachment

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing APPLICANT'S MOTION FOR SANCTIONS was served via email, this 26th day of June 2024, upon Opposer's counsel at the following address:

Thomas Dirksen
DIRKSEN LAW
trademarks@dirksenlaw.com

ERICA R. HALSTEAD

Halstead, Erica

From: Halstead, Erica
Sent: Tuesday, May 14, 2024 3:22 PM
To: Trademarks
Subject: RE: INFINIUM SPIRITS v JC MASTER DISTRIBUTION LIMITED Notice of Opposition against RAYA Our Ref: 115941.0699.3
Attachments: RAYA ZAYA PreTrial Disclosures.pdf

Tom,

My client's Pre-Trial Disclosures are attached. Although we are still hoping to settle this matter, I note that the proceedings have not been suspended and thus, we are required to satisfy the trial schedule set forth by the Board.

If your client intends to settle this matter, we request their comments without further delay so that my client may determine next steps.

Regards,
Erica

From: Halstead, Erica
Sent: Monday, April 22, 2024 4:52 PM
To: Trademarks <trademarks@dirksenlaw.com>
Subject: RE: INFINIUM SPIRITS v JC MASTER DISTRIBUTION LIMITED Notice of Opposition against RAYA Our Ref: 115941.0699.3

Tom,

It has now been one month since we sent you comments on the latest round of settlement terms. Please provide your client's comments.

Regards,

From: Halstead, Erica
Sent: Friday, April 12, 2024 5:01 PM
To: Trademarks <trademarks@dirksenlaw.com>
Subject: RE: INFINIUM SPIRITS v JC MASTER DISTRIBUTION LIMITED Notice of Opposition against RAYA Our Ref: 115941.0699.3

Tom,

Please let me know if you have discussed my email of March 22nd with your client.

Regards,
Erica

From: Halstead, Erica
Sent: Tuesday, April 2, 2024 5:11 PM
To: Trademarks <trademarks@dirksenlaw.com>
Subject: RE: INFINIUM SPIRITS v JC MASTER DISTRIBUTION LIMITED Notice of Opposition against RAYA Our Ref: 115941.0699.3

Tom,

I am following up – any feedback from your client?

Thanks,
Erica

From: Halstead, Erica
Sent: Friday, March 22, 2024 1:54 PM
To: Trademarks <trademarks@dirksenlaw.com>
Subject: RE: INFINIUM SPIRITS v JC MASTER DISTRIBUTION LIMITED Notice of Opposition against RAYA Our Ref: 115941.0699.3

WITHOUT PREJUDICE / FOR SETTLEMENT PURPOSES ONLY

Dear Tom,

I have discussed your latest offer with my client. [redacted]

Additionally, as we have yet to receive any discovery responses from your client, we request that you provide us with their comments no later than March 29th.

Certainly, we hope that the Parties will be able to reach a settlement, and I await your reply.

Regards,
Erica

[redacted]