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

Proceeding no.	91284805
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Date	01/13/2025
Attachments	Opposition 91284805 - Opposers Motion for Sanctions.pdf(164370 bytes)

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

CANDLE SCIENCE, LLC

Opposer,

v.

GRACE TINGTING FU

Applicant.

Opposition No. 91284805

Serial No. 97/336,471



Mark:

OPPOSER’S MOTION FOR SANCTIONS

Pursuant to Fed. R. Civ. P. 37(b)(2), 37 C.F.R. §2.210(h)(1) of the Trademark Rules, and §527 of the Trademark Trial and Appeal Board (“Board”) Manual of Procedure (“TBMP”), Opposer Candle Science, LLC (“Opposer”) respectfully requests that the Board issue an order sanctioning Applicant Grace Tingting Fu (“Applicant”) for refusing to comply with her discovery obligations and with the Board’s Order of December 6, 2024 by entering judgment against Applicant. Opposer submits this Motion for the sanction of judgment as invited by the Board in its December 6, 2024 Order. (26 TTABVUE 2).

Throughout this proceeding, Applicant has failed to provide basic discovery. Now Applicant has refused to comply with a Board Order requiring certain discovery responses and documents be provided to Opposer. Applicant’s lack of interest in this proceeding has also become a pattern. After Applicant’s counsel withdrew representation in May of last year, the Board gave Applicant time to appoint new counsel. Applicant asked the Board for more time, and the Board granted Applicant’s request. Applicant did not, however, appoint new counsel or otherwise respond to the Board. Applicant then failed to respond to Opposer’s Motion to Compel. Now,

Applicant has refused to comply with the Board's resulting Order to provide discovery to Opposer. Applicant has been absent for over six months. Her inaction evidences her intent not to meaningfully participate in this proceeding.

In view of Applicant's violations of the Board's Order and Applicant's absence in this proceeding for over six months, Opposer requests that the Board enter sanctions in the form of judgment with prejudice against Applicant and refuse registration of Applicant's mark, CANDLE LAB and Design, U.S. Trademark Application No. 97/336,471.

I. BACKGROUND

On January 16, 2024, Opposer served its First Revised Set of Interrogatories (Nos. 1-39) and First Revised Set of Requests for Production of Documents and Things (Nos. 1-39). (19 TTABVUE 4). Although Applicant served responses, those responses were deficient.

Opposer repeatedly tried to resolve the deficiencies with Applicant, including, for example, through correspondence in February, March, and April of 2024, and through a telephonic meet in April 2024. (19 TTABVUE). Applicant's counsel refused to supplement any of Applicant's responses. (19 TTABVUE 9). Because Applicant refused to provide the requested discovery, and because Opposer's counsel's attempts to resolve the issues were unsuccessful, Opposer was forced to file a Motion to Compel on April 12, 2024. (19 TTABVUE).

Shortly thereafter, Applicant's counsel filed a Motion to Withdraw as Representative on April 21, 2024. (21 TTABVUE). In the Motion, Applicant's counsel alleged that Applicant failed to pay her legal bills and failed to adequately communicate with Applicant's counsel. (21 TTABVUE 3).

The Board suspended this proceeding on May 17, 2024, and allowed Applicant thirty days to either appoint new counsel or decide to represent herself. (22 TTABVUE 2). Applicant filed a

paper on June 17, 2024, stating both that she would represent herself and requesting a 30-day extension of time to obtain new counsel. (23 TTABVUE 2-5). The Board granted Applicant's extension request on July 24, 2024, and gave Applicant 30 days to secure new counsel. (24 TTABVUE 2). Applicant had over four months to obtain new counsel from the April 12, 2024 date of withdrawal until the Board's August 23, 2024 deadline. Applicant chose not to do so.

On October 31, 2024, the Board ruled on a motion that Applicant (through counsel) had previously filed that challenged the confidentiality designations of Opposer's discovery responses. (25 TTABVUE). The Board denied Applicant's motion for a lack of good faith effort to resolve the dispute, and denied Applicant's request for sanctions. (25 TTABVUE 7). The Board also allowed Applicant 20 days to file a response to Opposer's Motion to Compel. (25 TTABVUE 9). Applicant chose not to file a response.

After Applicant failed to respond, the Board granted Opposer's Motion to Compel as conceded on December 6, 2024, ordering Applicant to (1) serve complete and verified responses to Interrogatory Nos. 5, 7, 13, 16, 22, 23, and 28, and (2) produce documents responsive to Opposer's Request for Production Nos. 11, 22, 23, and 33. (26 TTABVUE) The deadline for Applicant to comply with the Board's Order was January 5, 2025. *Id.* Applicant failed to comply with the Board's Order and did not provide any of the discovery that Applicant was ordered to. And Applicant has been absent in this proceeding since June 2024.

II. THE BOARD SHOULD ENTER JUDGMENT IN FAVOR OF OPPOSER

Pursuant to Fed. R. Civ. P. 37(b)(2), 37 C.F.R. §2.210(h)(1), and TBMP §527.01, and as invited by the Board in its December 6 Order, because Applicant has failed to engage in discovery and has failed to comply with the Board's Order, the Board should enter an order for sanctions, including entry of judgment. The Board has routinely entered sanctions in the form of judgment

in similar proceedings. For example, in *LT Overseas North America, Inc. v. Pickin' Cotton Communications, LLC*, Opposition No. 91267259, (24 TTABVUE) (January 23, 2023) [not precedential], the Board entered judgment after applicant disobeyed the Board order's that compelled applicant to serve supplemental discovery responses without objections. 24 TTABVUE 9. Although applicant supplemented its discovery responses, the Board found the responses were evasive, inadequate, and included improper boilerplate objections. *Id.*, at 24 TTABVUE 6-7. The Board stated that judgment was appropriate because the applicant's behavior did not suggest applicant would cooperate if given another chance. *Id.*, at 24 TTABVUE 9.

Similarly, in *Transamerica Corp. v. Amos*, Opposition No. 91251090 (41 TTABVUE) (March 31, 2022), the Board entered judgment against a pro se applicant after applicant disobeyed the Board's order that compelled applicant to serve discovery responses. There, opposer filed a motion to compel after applicant failed to respond to opposer's discovery requests. TTABVUE 7. Applicant responded by filing several papers not germane to the discovery issues in opposer's motion to compel. *Id.*, 41 TTABVUE 2. Opposer then filed a motion for sanctions, which the Board granted. *Id.*, 41 TTABVUE 15. The Board found that applicant was unwilling to cooperate in the discovery process or comply with the Board's orders. *Id.*, 41 TTABVUE 11-12.

The same reasoning as in *LT Overseas North America* and *Transamerica* applies here. Applicant failed to comply with the Board's discovery order and has been unwilling to cooperate in discovery. And Applicant has failed to participate in this proceeding for over six months—including by not obtaining counsel when given additional time to do so, not responding to Opposer's motion to compel, and not providing the discovery Applicant was ordered to provide—which shows that Applicant will not cooperate even if given another chance.

The Board has also entered judgment in other similar cases, which further supports the

Board doing so here. *See, e.g., Raygun Ltd. v. Planet 9 Studios, Inc. and SapientX Inc.*, Cancellation No. 92064727, (27 TTABVUE) (May 27, 2020) (granting petitioner's combined motion for summary judgment and discovery sanctions after respondent failed to meet and confer with opposing counsel and failed to comply with Board's discovery order); *Central Mfg. Co. v Hepa Corp.*, Opposition No. 91152243, (57 TTABVUE) (April 12, 2005) (entering judgment and dismissing opposition with prejudice after opposer disobeyed the Board order to serve discovery responses).

Making this situation even more egregious is that Applicant refused to provide highly relevant discovery even after ordered to do so. For example, Opposer's Interrogatory No. 7 asked Applicant to identify first use dates in commerce in the U.S. for any goods or services used with Applicant's mark. (19 TTABVUE 5). As additional examples, Opposer's Interrogatory No. 5 asked Applicant to identify documents about its first use, Interrogatory No. 13 asked Applicant to identify those that have used its mark, and Interrogatory No. 16 asked Applicant to identify advertising for any good or services for its mark. (19 TTABVUE 34-36). Yet Applicant refused to respond to these interrogatories. (19 TTABVUE 4-5). As final examples, Applicant refused to produce documents in response to Request for Production Nos. 22 and 23 that requested Applicant's sales and advertising expenditures in the United States for Applicant's goods and services offered under Applicant's mark. (19 TTABVUE 6-7).

Opposer appreciates that Applicant is pro se. But the Board has already been more than patient with Applicant in granting additional time to find new counsel and in granting additional time to respond to Opposer's motion to compel. And as the Board has found before, being pro se does not excuse Applicant's failure to comply with Applicant's discovery obligations and with the Board's Order. *See, e.g., Transamerica Corp. v. Amos*, Opposition No. 91251090 (March 31,

2022) (“Applicant’s pro se status does not excuse his failure to comply with the Discovery Order.”); *McDermott v. San Francisco Women’s Motorcycle Contingent*, 81 USPQ2d 1212, 1212 n.2 (TTAB 2006) (strict compliance with the rules is required even for pro se applicants).

Finally, Opposer understands that the Board will suspend this proceeding for all matters not germane to this Motion, and therefore requests that if proceedings are resumed, the Board extend the close of discovery by two months (it’s currently set to close February 5, 2025), and that all subsequent dates, including pretrial disclosures and testimony periods, be reset. There is good cause for this request because the current schedule does not afford Opposer sufficient time to complete discovery. This request is not necessitated by any lack of diligence or unreasonable delay by Opposer, but rather, as explained above and in Opposer’s Motion to Compel (19 TTABVUE), by Applicant.

III. CONCLUSION

For at least the foregoing reasons, Opposer respectfully requests that the Board grant the Motion for Sanctions, enter judgment for Opposer and against Applicant with prejudice, refuse registration of U.S. Application No. 97/336,471, and grant all other appropriate relief.

Date: January 13, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on this January 13, 2025, a copy of the foregoing OPPOSER'S MOTION FOR SANCTIONS was served on Applicant, by email, addressed as follows:

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/mark houston /