

TTAB

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

In the Matter of:
U.S. Registration No. 2,405,188

MEDWEAR, INC.
a Florida Corporation,

Petitioner,

v.

COMPARTS, INC.
a Texas Corporation,

Registrant.

Mark: **MED WEAR and Design**
Registration Date:
November 21, 2000
Status: Registered

Cancellation No. 92041563



04-20-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

**MOTION FOR SANCTIONS PURSUANT TO
T.B.M.P. SECTION 527 AND MEMORANDUM OF LAW
AND REQUEST FOR SUSPENSION OF ALL RUNNING
DEADLINES AND THIS CANCELLATION PROCEEDING**

Comes now Petitioner, Medwear, Inc., and hereby files this Motion for Discovery Sanctions pursuant to Section 527 of the Trademark Trial and Appeal Board Manual of Procedures ("T.B.M.P.") for Registrants failure to comply with the Board's Order dated February 20, 2004. In support thereof Petitioner states as follows:

1. By Order dated February 20, 2004, the Board granted Petitioner's Motion to Compel Discovery Responses to Petitioner's First set of Interrogatories and Petitioner's First Request for Production of Documents.

2. Registrant was provided thirty (30) days from February 20, 2004 in which to serve full and complete responses to both documents.

3. As of the date of this current Motion, Registrant has failed to provide any responses or any other communications responsive to Petitioner's Interrogatories and Requests for Production of Documents and, thus, has failed to comply in any manner with the Board's February 20, 2004 Order.

4. Accordingly, Petitioner respectfully requests all available discovery sanctions, including an award of default judgment canceling U.S. Registration No. 2,405,188, for Registrant's failure to abide or comply in any manner with the Board's February 20, 2004 Order.

**MEMORANDUM OF LAW AND REQUEST FOR SUSPENSION
OF ALL RELEVANT TIME PERIODS**

37 C.F.R. Section 2.120(g) entitled "SANCTIONS" states, in pertinent, that if a party fails to comply with an Order of the Trademark Trial and Appeal Board relating to discovery 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." Accordingly, if a party fails to comply with an Order relating to discovery, the Board may enter appropriate sanctions.

Pursuant to T.B.M.P. Section 527.01, the type of sanctions available include striking all or part of the pleadings of the

disobedient party, refusing to allow the disobedient party to support or oppose designated claims or defenses, prohibiting the disobedient party introducing designated matters in evidence, and entering judgment against the disobedient party. Id. Though default is a harsh remedy it is justified where no less drastic remedy will be effective and there is a strong showing of willful evasion.

Petitioner respectfully submits in this case that the harsh remedy of default judgment against Registrant is appropriate. In response to Petitioner's Motion to Compel, Registrant failed to provide any response at all. Once the Board issued the February 20, 2004 Order, Registrant again failed to make any attempt to comply with the Board's Order. As all previous attempts to have Registrant respond in any way to Petitioner's outstanding Petitioner's discovery have been ineffective, the entry of default judgment against Registrant is warranted.

Accordingly, in view of Registrant's complete failure to comply or respond in any manner to the Board's February 20, 2004 Order, Petitioner respectfully requests that all available sanctions be levied against Registrant that are available, including the entry of default judgment and the cancellation of U.S. Registration No. 2,405,188.

In view of this Motion, Petitioner also respectfully requests the suspension of all relevant time periods in this cancellation proceeding including the time for filing dispositive Motions and

taking any testimonies until a ruling on this Motion For Sanctions
has been made.

Respectfully submitted,



Daniel S. Polley, Reg. No. 34,902
MALIN, HALEY & DiMAGGIO, P.A.
1936 South Andrews Ave.
Fort Lauderdale, Florida 33316
Tel: (954) 763-3303
Fax: (954) 522-6507

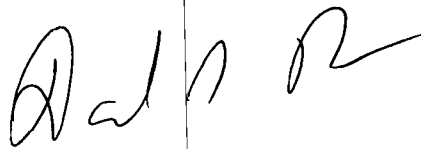
I:\10000\10659\litigate\6702.Pet.Mot.Sanctions.doc

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing MOTION FOR SANCTIONS PURSUANT TO T.B.M.P. SECTION 527 AND MEMORANDUM OF LAW AND REQUEST FOR SUSPENSION OF ALL RUNNING DEADLINES AND THIS CANCELLATION PROCEEDING has been deposited with the United States Postal Service in a postage paid envelope addressed to representative of Registrant:

Gene E. Fjerstad, President
Comparts, Inc.
2208 Primose Bldg. G
McAllen, Texas 78504

This 16th day of April, 2004.



Daniel S. Polley, Reg. No. 34,902
MALIN, HALEY & DiMAGGIO, P.A.
1936 South Andrews Ave.
Fort Lauderdale, Florida 33316
Tel: (954) 763-3303
Fax: (954) 522-6507

I:\10000\10659\litigate\6702.Pet.Mot.Sanctions.doc

In the matter of : U.S. Registration No. 2,405,188
Cancellation No. 92041563
File Number: 10659.6702

CERTIFICATE OF MAILING

I HEREBY CERTIFY that the following correspondence: MOTION FOR SANCTIONS PURSUANT TO T.B.M.P. SECTION 527 AND MEMORANDUM OF LAW AND REQUEST FOR SUSPENSION OF ALL RUNNING DEADLINES AND THIS CANCELLATION PROCEEDING, is being deposited with the United States Postal Service as first class mail in an envelope addressed to: MAIL STOP TTAB NO FEE, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514, this 16th day of April, 2004.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States Code.

Any additional charges, including extension of time, please bill our Account No. 13-1130.

Betty Bernal
Betty Bernal, Paralegal

Date: APRIL 16, 2004

MALIN, HALEY & DiMAGGIO, P.A.
1936 South Andrews Avenue
Fort Lauderdale, Florida 33316
(954) 763-3303