

ESTTA Tracking number: **ESTTA458805**

Filing date: **02/27/2012**

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

Proceeding	92052738
Party	Plaintiff Premium Denim, LLC
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Submission	Motion for Sanctions
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Date	02/27/2012
Attachments	66884-0045 Motion to Compel - ALYN PAIGE.pdf (13 pages)(227059 bytes)

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

PREMIUM DENIM, LLC,

Petitioner,

v.

ALYN PAIGE CORPORATION,

Registrant.

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Opposition No. 92/052,738

Registration No.: 3,239,342

Mark: ALYN PAIGE

Atty. Ref. No.: 66884-0043

PETITIONER'S MOTION FOR: (1) SANCTIONS IN THE FORM OF ENTRY OF JUDGMENT; (2) SUMMARY JUDGMENT, OR, (3) IN THE ALTERNATIVE, AN ORDER COMPELLING PRODUCTION OF DOCUMENTS AND RESPONSES TO INTERROGATORIES; REQUEST FOR STAY OF PROCEEDINGS

Petitioner Premium Denim, LLC (“Petitioner”), through its undersigned counsel, hereby moves, pursuant to the Board’s Order dated January 10, 2012 (the “Order”) for : (1) entry of sanctions in the form of entry of judgment granting the petition for cancellation against registrant Alyn Paige Corporation (“Registrant”); (2) entry of summary judgment in its favor; or, (3) in the alternative, an order compelling Registrant to comply with the Order and provide “responses, without objection on the merits, to petitioner’s first set of interrogatories and requests for production” and to produce all responsive documents. Petitioner makes this Motion pursuant to Rules 37 and 56 of the Federal Rules of Civil Procedure and 37 C.F.R. 2.120(e), (g), & (h) and 37 C.F.R. 2.127.

I. INTRODUCTION

On January 10, 2012, the Board entered the Order, requiring Registrant to respond, without objection to Petitioner’s interrogatories and requests for production on or before February 13, 2012. Order, p. 1. The Board also deemed admitted the matters in Petitioner’s first

request for admissions. To date, Registrant has still not responded to the outstanding discovery requests. Bromall Decl., ¶ 2.

Accordingly, Petitioner seeks entry of sanctions against Registrant for violating the Court's order, in the form of entry of judgment against it. In the alternative, based on Registrant's admissions, Petitioner seeks entry of summary judgment in its favor. Finally, if the Board is not inclined to grant the foregoing, Petitioner seeks another order compelling Registrant to respond to its interrogatories and requests for production and to produce all relevant documents.

II. THE BOARD SHOULD ENTER SANCTIONS AGAINST REGISTRANT IN THE FORM OF JUDGMENT AGAINST IT DUE TO ITS FAILURE TO OBEY THE ORDER

In the Order, the Board directed Registrant to provide responses, without objection, to Petitioner's interrogatories and requests for production. To date, Registrant has not served any responses, nor has it produced any documents. Bromall Decl., ¶ 2.

37 C.F.R. 2.120(g)(1) allows the TTAB to impose upon any party who fails to comply with its orders any appropriate sanction, including those afforded under Rule 37(b)(2) of the Federal Rules of Civil Procedure. Rule 37(b)(2)(A)(v) allows the TTAB to dismiss this action entirely. Indeed, the TTAB warned of such a sanction in its Order compelling Registrant to respond to Petitioner's discovery requests. *See* Order, p. 1.

Registrant has entirely failed to comply with its discovery obligations. Petitioner respectfully requests that the Board enter sanctions against Registrant in the form of entry of judgment.

III. SUMMARY JUDGMENT IS APPROPRIATE

Petitioner sought entry of cancellation of Registrant's mark on the grounds of abandonment. To establish abandonment, Petitioner must prove that Registrant has ceased use

of the mark and does not intend to resume use. On account of Registrant's failure to timely respond to Petitioner's request for admissions, all of Petitioner's requests for admission have been deemed admitted by the TTAB. Consequently, Registrant is deemed to have admitted, *inter alia*, the following:

- That it does "not use Registrant's Mark in the United States." (RFA No. 1)
- That it does "not sell goods bearing Registrant's Mark." (RFA No. 37)
- That it does "not intend to sell goods bearing Registrant's Mark." (RFA No. 38)

Bromall Decl., ¶ 3, Exh. A.

Thus, Registrant has admitted that it does not use its mark and does not intend to use its mark. In light of these admissions, summary judgment should be entered in Petitioner's favor.

IV. CONCLUSION

In view of the Registrant's deemed admissions and failure to comply with its discovery obligations and the Board's Order, Petitioner respectfully requests that the Board issue an order: (1) entering judgment against Registrant; or (2) in the alternative, an order compelling Registrant to comply with the Order and respond to the outstanding discovery requests. Petitioner further requests that, pursuant to 37 C.F.R. § 2.120(e)(2) and TBMP 523.01, the Board immediately suspend these proceedings with respect to all matters not germane to this motion.

Dated: February 27, 2012

/S/ JESSICA C. BROMALL

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Attorneys for Petitioner Premium Denim, LLC

DECLARATION OF JESSICA C. BROMALL

I, JESSICA C. BROMALL, declare as follows:

1. I am an attorney licensed to practice law in the State of California and an associate at the law firm of Jeffer Mangels Butler & Mitchell LLP, counsel for petitioner Premium Denim, LLC ("Petitioner") in the above-referenced matter. I have personal knowledge of the facts set forth herein, or knowledge based on the documents in my firm's files in the relevant matters, and, if called as a witness, could and would competently testify thereto. I submit this declaration in support of Petitioner's for Sanctions in the Form of Entry of Judgment or Summary Judgment, or, in the Alternative, to Compel Production of Documents and Responses to Interrogatories (the "Motion").

2. Petitioner propounded requests for production and interrogatories, responses to which were due on or before April 25, 2011. No responses were served. On January 10, 2012, on Petitioner's Motion, the Board entered an order directing Registrant to serve responses to Petitioner's requests for production and interrogatories. To date, Registrant has not produced a single document, nor has it served any responses to Petitioner's discovery requests.

3. A true and correct copy of Petitioner's First Request for Admissions is attached hereto as Exhibit A.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct, and that this Declaration is executed on February 27, 2012 at Los Angeles, California.

/S/ JESSICA C. BROMALL

JESSICA C. BROMALL

EXHIBIT A

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

PREMIUM DENIM, LLC,

Petitioner,

v.

ALYN PAIGE CORPORATION,

Registrant.

Opposition No. 92/052,738

Registration No.: 3,239,342

Mark: ALYN PAIGE

Atty. Ref. No.: 66884-0043

PETITIONER'S FIRST REQUEST FOR ADMISSIONS TO
REGISTRANT ALYN PAIGE CORPORATION

Pursuant to Rule 36 of the Federal Rules of Civil Procedure ("FRCP") and Rule 2.120 of the Trademark Rules of Practice (37 C.F.R. § 2.120), petitioner Premium Denim, LLC ("Petitioner") hereby requests that Registrant Alyn Paige Corporation ("Registrant") admit or deny the truth of the following Requests for Admissions, separately and fully in writing, within thirty (30) days after service hereof.

DEFINITIONS AND INSTRUCTIONS

The Definitions and Instructions set forth in Petitioner's First Set of Interrogatories to Registrant, which was served concurrently herewith, are incorporated herein by reference.

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REQUEST FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1:

Admit that You do not use Registrant's Mark in the United States.

REQUEST FOR ADMISSION NO. 2:

Admit that You do not use Registrant's Mark in commerce in connection with each good identified in U.S. Reg. No. 3,239,342.

REQUEST FOR ADMISSION NO. 3:

Admit that You were not using Registrant's Mark in commerce in connection with each good identified in U.S. Reg. No. 3,239,342 as of June 6, 2006.

REQUEST FOR ADMISSION NO. 4:

Admit that You were not using Applicant's Mark in commerce in connection with each good identified in U.S. Reg. No. 3,239,342 as of January 1, 1993.

REQUEST FOR ADMISSION NO. 5:

Admit that You do not use Registrant's Mark in the United States in connection with women's clothing.

REQUEST FOR ADMISSION NO. 6:

Admit that You do not use Registrant's Mark in the United States in connection with dresses.

REQUEST FOR ADMISSION NO. 7:

Admit that You do not use Registrant's Mark in the United States in connection with skirts.

REQUEST FOR ADMISSION NO. 8:

Admit that You do not use Registrant's Mark in the United States in connection with pants.

REQUEST FOR ADMISSION NO. 9:

Admit that You do not use Registrant's Mark in the United States in connection with jackets.

REQUEST FOR ADMISSION NO. 10:

Admit that You do not use Registrant's Mark in the United States in connection with blouses.

REQUEST FOR ADMISSION NO. 11:

Admit that You do not use Registrant's Mark in the United States in connection with shirts.

REQUEST FOR ADMISSION NO. 12:

Admit that You do not use Registrant's Mark in the United States in connection with t-shirts.

REQUEST FOR ADMISSION NO. 13:

Admit that You do not use Registrant's Mark in the United States in connection with shorts.

REQUEST FOR ADMISSION NO. 14:

Admit that You do not use Registrant's Mark in the United States in connection with sweaters.

REQUEST FOR ADMISSION NO. 15:

Admit that You were not using Registrant's Mark on or before June 6, 2006.

REQUEST FOR ADMISSION NO. 16:

Admit that You were not using Registrant's Mark in connection with women's clothing on or before June 6, 2006.

REQUEST FOR ADMISSION NO. 17:

Admit that You were not using Registrant's Mark in connection with dresses on or before June 6, 2006.

REQUEST FOR ADMISSION NO. 18:

Admit that You were not using Registrant's Mark in connection with skirts on or before June 6, 2006.

REQUEST FOR ADMISSION NO. 19:

Admit that You were not using Registrant's Mark in connection with pants on or before June 6, 2006.

REQUEST FOR ADMISSION NO. 20:

Admit that You were not using Registrant's Mark in connection with jackets on or before June 6, 2006.

REQUEST FOR ADMISSION NO. 21:

Admit that You were not using Registrant's Mark in connection with blouses on or before June 6, 2006.

REQUEST FOR ADMISSION NO. 22:

Admit that You were not using Registrant's Mark in connection with shirts on or before June 6, 2006.

REQUEST FOR ADMISSION NO. 23:

Admit that You were not using Registrant's Mark in connection with t-shirts on or before June 6, 2006.

REQUEST FOR ADMISSION NO. 24:

Admit that You were not using Registrant's Mark in connection in connection with shorts on or before June 6, 2006.

REQUEST FOR ADMISSION NO. 25:

Admit that You were not using Registrant's Mark in connection in connection with sweaters on or before June 6, 2006.

REQUEST FOR ADMISSION NO. 26:

Admit that You were not using Registrant's Mark on or before October 1, 1993.

REQUEST FOR ADMISSION NO. 27:

Admit that You were not using Registrant's Mark in connection with women's clothing on or before October 1, 1993.

REQUEST FOR ADMISSION NO. 28:

Admit that You were not using Registrant's Mark in connection with dresses on or before October 1, 1993.

REQUEST FOR ADMISSION NO. 29:

Admit that You were not using Registrant's Mark in connection with skirts on or before October 1, 1993.

REQUEST FOR ADMISSION NO. 30:

Admit that You were not using Registrant's Mark in connection with pants on or before October 1, 1993.

REQUEST FOR ADMISSION NO. 31:

Admit that You were not using Registrant's Mark in connection with jackets on or before October 1, 1993.

REQUEST FOR ADMISSION NO. 32:

Admit that You were not using Registrant's Mark in connection with blouses on or before October 1, 1993.

REQUEST FOR ADMISSION NO. 33:

Admit that You were not using Registrant's Mark in connection with shirts on or before October 1, 1993.

REQUEST FOR ADMISSION NO. 34:

Admit that You were not using Registrant's Mark in connection with t-shirts on or before June 6, 2006.

REQUEST FOR ADMISSION NO. 35:

Admit that You were not using Registrant's Mark in connection in connection with shorts on or before October 1, 1993.

REQUEST FOR ADMISSION NO. 36:

Admit that You were not using Registrant's Mark in connection in connection with sweaters on or before October 1, 1993.

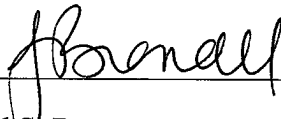
REQUEST FOR ADMISSION NO. 37:

Admit that You do not sell goods bearing Registrant's Mark.

REQUEST FOR ADMISSION NO. 38:

Admit that You do not intend to sell goods bearing Registrant's Mark.

Dated: March 21, 2011



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CERTIFICATE OF SERVICE

It is hereby certified that on March 21, 2011, a copy of the foregoing PETITIONER'S FIRST REQUEST FOR ADMISSIONS TO REGISTRANT ALYN PAIGE CORPORATION has been sent by first class mail, postage prepaid, to the owner of record for the registration at its correspondence address of record:

Albert Bitton
Alyn Paige Corporation
225 West 37th Street, 9th Floor
New York, NY 10018



Esther Silverman

CERTIFICATE OF SERVICE

It is hereby certified that on February 27, 2012 a copy of the foregoing **PETITIONER'S MOTION FOR: (1) SANCTIONS IN THE FORM OF ENTRY OF JUDGMENT; (2) SUMMARY JUDGMENT, OR, (3) IN THE ALTERNATIVE, AN ORDER COMPELLING PRODUCTION OF DOCUMENTS AND RESPONSES TO INTERROGATORIES; REQUEST FOR STAY OF PROCEEDINGS** has been sent by first class mail, postage prepaid, to the correspondent of record for registrant Alyn Paige Corporation:

Albert Bitton
Alyn Paige Corporation
225 West 37th Street, 9 Floor
New York, NY 10022
United States
abitton@alynpaige.com



Esther Silverman