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

Proceeding	92066525
Party	Plaintiff Mariana Travassos Miguel Pereira
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Submission	Opposition/Response to Motion
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Date	05/17/2019
Attachments	2019 05 17 Opposition to Thompson motion to dismiss.pdf(72188 bytes)

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

In the matter of Registration No.: 4771161
For the mark: HUNTER FIGHT WEAR
Registered on July 14, 2015

Mariana Travassos Miguel Pereira,

Petitioner,

vs.

Dean Thompson,

Registrant.

Cancellation No. 92066525

**PETITIONER’S BRIEF IN RESPONSE TO REGISTRANT’S MOTION
TO DISMISS FOR FAILURE TO TAKE TESTIMONY**

Mariana Travassos Miguel Pereira (“petitioner”) submits the following brief in response to registrant’s May 3, 2019 motion to dismiss. In short, registrant’s motion should be denied because petitioner’s trial period has not begun, and it’s not set to end until July 28, 2019. Thus, petitioner’s window within which to submit evidence in support of her cancellation action has not even opened, let alone closed. Moreover, no authority supports dismissing an action for failure to conduct discovery during a cancellation proceeding.

Registrant cites 37 CFR § 2.132(b), but this section pertains to circumstances where the plaintiff’s trial period ends without the plaintiff having submitted any evidence in support of the action. This section does not support a dismissal because a plaintiff chose not to engage in written discovery or take discovery depositions.

Registrant also cites Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 534.04, but this section pertains to the sufficiency or lack of sufficiency of

evidence a plaintiff offers during the trial period. Nothing in § 534.04 discusses discovery proceedings or offers support for the notion that an action may be dismissed because a plaintiff chose to forego engaging in written discovery or taking discovery depositions.

Here, petitioner will timely serve her pretrial disclosures on registrant's counsel. And, once petitioner's trial period begins, on June 28, 2019, she will file sufficient evidence in support of her cancellation proceeding before the July 28, 2019 close of her trial period.

Based on the foregoing, petitioner requests that the Board deny registrant's motion and keep the current trial schedule in place.

Respectfully submitted,

Dated: May 17, 2019

/s/ Derek A. Simpson

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Counsel for petitioner,
Mariana Travassos Miguel Pereira

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing document has been served on registrant's counsel of record by emailing a copy of the document on May 17, 2019 to:

pollie@gandalegal.com

Pollie Gautsch, G&A Legal, 665 San Rodolfo, #124-209, Solana Beach, CA 92075

Date: May 17, 2019

/s/ Derek A. Simpson
Derek A. Simpson