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

Proceeding	92076233
Party	Plaintiff Imagination Games Inc.
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Submission	Reply in Support of Motion
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Date	08/04/2021
Attachments	Reply to Opposition L21035.pdf(171520 bytes)

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

Imagination Games Inc.,
Petitioner,
v.
Imagination Holdings Pty Ltd.,
Registrant.

Cancellation No. 92076233
Registration No. 4001241
Mark: IMAGINATION

**PETITIONER’S REPLY TO REGISTRANT’S OPPOSITION TO MOTION TO
COMPEL DISCOVERY RESPONSES AND MOTION FOR SANCTIONS**

Registrant’s Opposition Motion is filed with factual and legal inaccuracies. Petitioner responds only to those inaccuracies that once rectified, show that the registration should be cancelled, and this case resolved.

A. Petitioner’s Requested to meet and confer several times but was ignored.

Registrant argues “Petitioner’s Motion Should be Denied as Filed in Bad Faith and Without a Proper Meet and Confer.” This is false. Petitioner admits to meeting and conferring regarding discovery. (TTABVUE 12). Furthermore, Petitioner requested additional meet and confers and specifically narrowed issues by pointing out particular discovery that Petitioner most needed. (Tamsut Dec. Exhibit K, Exhibit L, Exhibit M to original Motion – TTABVUE 11).

B. Cancellation is an Appropriate Remedy Given Registrant's Conduct and Refusal to Produce Discovery.

Registrant argues "The Motion Should Be Denied Because the Requests Lack Proportionality" and that "Sanctions Are Unavailable." First, the sanction requested is available, the TBMP specifically reserves cancellation of a registration for parties that refuse to participate in proceedings and discovery. TBMP § 411.05 ("The range of sanctions listed in Fed. R. Civ. P. 37(b)(2), and which may be entered by the Board include [. . .] entering judgment against the disobedient party."). Registrant's assertion is legally false. Regarding proportionality, Registrant's tactic for this case appears to solely be to delay the case and suppress all evidence of nonuse, a remedy of cancellation of the registration is not only proportional to the needs of the case but necessary. Note that Registrant's counsel does not actually deny that she unequivocally stated she would not be producing any discovery in this case. Registrant's statements and conduct demonstrate they have no intention of showing evidence of use of the IMAGINATION mark for the registered goods of DVDs or the goods they claim to now be selling. Aside from late objections, and an insistence that their client could not be made available for deposition because they were out of the country, Registrant's CEO sent a profanity laced email to my law firm in response to this dispute. (Tamsut Dec 2. Exhibit N).

That email contains no evidence of use, but it does demonstrate Registrant's general attitude regarding this proceeding, and why the appropriate remedy is cancellation of the registration. The signature of the email also indicates that the Registrant has a United States address. It seems that counsel's insistence her client is out of the country and unavailable for a deposition, is yet another inaccuracy.

C. Registrant's Petition to Amend the Identification of Goods is an Admission of their Nonuse of the Mark.

Registrant suggests suspension pending disposition of its petition to amend its goods and services. The issue of suspending this proceeding is a red herring. Petitioner need not repeat arguments of that motion here, Petitioner only writes to reiterate that 1) Registrant failed to meet and confer before filing that motion, and 2) the statements in that motion contradict statements made when the Section 8 affidavit for the instant registration was filed on July 17, 2017. If Registrant ceased use of the mark since 2017, that evidence should be discoverable here. If Registrant was not using the mark in 2017 on the associated goods when it filed its Section 8, then evidence (or the lack of evidence) of that should also be discoverable here. In view of the Registrant's petition, the Board has three options that empower it to cancel the registration: 1) as a sanction for discovery misconduct for refusing to produce any documents whatsoever, 2) because the Registrant admits that the mark has been abandoned on the registered goods, and 3) because the sworn statements in the Registrant's motion to amend (TTABVUE 7 & 8) and section 8 affidavit contradict one other, at least one of which demonstrates fraud on the USPTO.

Conclusion

Registrant's goal is simply to delay. Registrant has no intention of producing discovery or engaging the case on the merits absent TTAB intervention. This conduct should not be rewarded by still more delays in this case. Instead, the IMAGINATION registration should be cancelled because it has been abandoned for many years.

At a minimum, Registrant should be required to produce all responsive documents on a very short deadline and, if Registrant fails to do so, the appropriate sanction should be a factual finding that Registrant has no evidence of use. Thereafter, Petitioner will file its summary

judgment motion based upon a complete failure of Registrant to provide any proof of use and this dispute will be over.

August 4, 2021

Respectfully submitted,

/s/ Brian Tamsut

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Registrant.

Cancellation No. 92076233
Registration No. 4001241
Mark: IMAGINATION
Registration date: July 26, 2011

CERTIFICATE OF SERVICE

I hereby certify that Registrant was served this **PETITIONER’S REPLY TO REGISTRANT’S OPPOSITION TO MOTION TO COMPEL DISCOVERY RESPONSES AND MOTION FOR SANCTIONS** on August 4, 2021 via email at the following address of record in the Registration:

info@imaginationgames.com, llabela@bakerlaw.com, bhipdocket@bakerlaw.com,
jlesser@bakerlaw.com

August 4, 2021

/s/ Nicole M. Abeloe
Nicole M. Abeloe

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**DECLARATION OF BRIAN TAMSUT #2 IN SUPPORT OF PETITIONER'S MOTION
TO COMPEL DISCOVERY RESPONSES**

I Brian Tamsut declare as follows.

1. I am an attorney at SoCal IP Law Group LLP and attorney of record for Petitioner Imagination Games Inc. in this TTAB proceeding. I make this declaration based on my own personal knowledge.
2. On July 8, 2021, I received an email from what appears to be Registrant's CEO Shane Yeend. The email contains vulgar and offensive language that need not be repeated in this declaration. More importantly, the email contains no additional discovery, no request to meet and confer, and no evidence of use of the IMAGINATION mark.
3. At the bottom of the email signature is an address within the United States, 12100 Wilshire Blvd Suite 1540 Los Angeles California 90025.
4. A true and correct copy of this email is attached as Exhibit N to this declaration.

5. I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge.

August 4, 2021

/s/ Brian Tamsut
Brian Tamsut

Brian Tamsut

From: Shane Yeend <shane.yeend@imagination.com.au>
Sent: Thursday, July 08, 2021 12:46 AM
To: Brian Tamsut
Subject: Have received your emails.

I am the CEO and Founder of Imagination

I have been in the gaming space for 25+ years in the USA.

Your bully tactics because I won't agree to let your client use my mark are insane.

There is not a studio or retailer that will stand up in court and say we have not owned this mark and using it constantly since 1999.

Stop being an oppressive cunt and get the facts.

We have deals with every major studio for our digital games business over last 5 years. Your client cannot support his claims.

See you in court.

SY

Shane Yeend
CEO

"You always end up where you aim"

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