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

Proceeding	92076531
Party	Plaintiff Fashion One Television LLC
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Fashion One Television LLC Petitioner v. fashiontv.com GmbH Respondent	Cancellation No. 92076634 Cancellation No. 92076531 Registration No. 5477536 and Registration No. 3530563 Mark: **FASHION TV**

PETITIONER'S PRELIMINARY RESPONSE FOR RESPONDENT'S MOTION FOR JUDGMENT ON THE PLEADINGS AND ALTERNATIVELY FOR SUMMARY JUDGMENT

In the abovementioned proceedings, Petitioner Fashion One Television LLC and related companies (hereinafter "Petitioner") hereby responds to, and requests opportunity and additional time to respond, to the Motion for Judgment on the Pleadings and Summary Judgment (the "Motion") filed by Respondent on April 10, 2021, for the following reasons:

A. Respondent and Respondent's Counsel Attempt to Deceive and Defraud the Board

1. The factual allegations presented in the Motion contain a significant number of falsehoods and misrepresentations to the Trademark Trial and Appeals Board (the "Board").

Petitioner intends to vigorously defend this action, and introduce evidence of Petitioner and Petitioner's counsel deliberately trying to mislead the Board.

2. Respondent and Petitioner are competitors. It was in fact the Respondent that started a campaign massive attacks, starting in April 2013 and lasting for several years, through a multiple legal actions based on alleged trademark infringement on a trademark "Fashion One" that Respondent applied for in 2013. Such actions included a massive campaign against Petitioner's "Fashion One" brand, including the sending of cease and desist letters to practically all of Petitioners clients. Petitioner has spent an excess of $4 million to defend those actions and appease its customers.

3. It was also Respondent that started applying for a trademark "Fashion One" in 2013 in bad faith despite full awareness that Petitioner is using the "Fashion One" brand, including attempts to cancel registered "Fashion One" trademarks that Petitioner has acquired.

4. The 2016 "Settlement Framework Agreement" that Respondent introduced as Exhibit B has never matured into permanency. Respondents deliberately fails to mention that subsequent settlement talks failed. Specifically, the agreement includes a provision to that extent:

> *"In the event no final settlement can be reached, for any reason, this agreement shall serve as a mutual license […]"*

5. Both Respondent and Respondent's counsel is fully aware that a final settlement agreement never came to fruition. The agreement provided for a final draft to be negotiated between the parties, but any settlement negotiations broke down due to the highly instable persona of the principal of Respondent who frequently changed his mind about terms agreed to orally and refusing to sign or withdraw from a final agreement.

6. Throughout a period between 2013 and 2017, Petitioner and Respondent has initiated and concluded several dozens of legal actions worldwide related to the use of the brands in use or intended to use for a thematic television network - "Fashion One", "Fashion TV", and "Fashion Television".

7. It was Respondent that started cancellation actions in 2013 or 2014 related to the brand "Fashion Television" after being made aware of Petitioners efforts to acquire the brand.

8. Over a period of 3 years, Respondent has been engaged in an extensive campaign to sabotage Petitioner by legal actions commenced worldwide against Respondent and Respondent's existing or potential customers.

B. Petitioner has Legitimate Interest in the Proceedings

5. Petitioner has spent millions of Dollars on acquiring the rights to the brand "Fashion Television", a television channel established by what is now known as Bell Media, one of the premier media companies in Canada.

6. Clearly, the brand "Fashion TV" is confusingly similar to "Fashion Television".

7. Petitioner is routinely monitoring competitor activity, and has therefore ascertained the fact that the "Web Shop" Respondent claimed as Evidence of Use is permanently non functional. It does not take any orders, presumably because the account of the underlying ecommerce provide is no longer in good standing.

8. It is therefore safe to assume that Respondent abandoned activities in the United States, which entitles Petitioner to cancel its trademark registration on basis of non-use.

D. Respondent who is Portraying Petitioner as Abuse, is in fact Abuser

9. Respondent is trying to portray Petitioner as abuser. In fact, Respondent has attempted to register trademarks for Petitioners "Fashion One" channel in more than 20 jurisdictions.

10. In all but a handful jurisdictions, those applications were refused by national trademark offices due to the established prior rights Petitioner was holding.

11. Further, as Petitioner has vigorously defended Petitioner's "Fashion One" brand, almost all trademark offices have concluded that trademarks registered by the Respondent are to be cancelled for either bad faith or non use.

E. Petitioner is Entitled to Discovery

12. The procedures of the Trademark Trial and Appeals Board specifically include the period of discovery that establishes the fact of the underlying case.

13. Why Respondent believes that they are entitled to Summary Judgment before completion of the discovery period is a mystery, and the Board shall apply due process and allow both parties to go through the process prescribed in the guidelines.

12. From a standpoint of economic considerations, one must wonder why Respondent actually takes the costly effort of filing such elaborate motions if in case Respondent has in fact the evidence to address the underlying issue by just providing evidence of use, which they claim. Such evidence, if it is available, would undoubtedly be much easier to file. Instead Respondent relies on unsubstantiated claims and hearsay.

13. Petitioner has already served Petitioner's Discovery Requests upon Respondent. Instead of Responding to said requests, Respondent has filed the subject motion in an apparent attempt to evade the obligation of discovery.

14. One can only speculate about the reasons for going through such elaborate efforts to avoid discovery, but one logical conclusion is that Respondent in fact has nothing to substantiate actual use, and therefore fraud against the United States Patent and Trademark Office would come to light.

F. Petitioner Request Time to Respond

15. There is extensive material Petitioner intends to introduce to support the above, however in case the Board is considering the Motion of Respondent, requests a period of 60 days to

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