

T TAB

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

----- X
)
GOAMERICA, INC.,)
)
Opposer,)
)
 v.)
)
DATAWAVE TECHNOLOGIES CO., LLC,)
)
Applicant.)
 ----- X

Opposition No. 91157554



10-23-2003

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

OPPOSER'S MOTION FOR DEFAULT JUDGMENT

I. INTRODUCTION

Opposer, GoAmerica, Inc. ("Opposer"), hereby moves pursuant to T.B.M.P. § 508 and 37 C.F.R. § 2.106(a) for an order of default against Applicant, Datawave Technologies Co., LLC ("Applicant"), in the above-captioned matter.

II. PROCEDURAL BACKGROUND

The scheduling order issued by the Board on August 29, 2003 provides that the deadline for Applicant to file and serve its Answer to Opposer's Notice of Opposition was October 8, 2003. As of October 22, 2003, Applicant has not served its Answer or other responsive pleading

"EXPRESS MAIL" mailing label number-- EL544588717US

Date of Deposit October 23, 2003

I hereby swear that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. 1.10 on the date indicated above and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.

 Mark E. Peterson

 Signature

on Opposer and, to the best of Opposer's knowledge after due inquiry, Applicant has not filed an Answer or other responsive pleading in this matter with the Board.

Applicant has made no attempt whatsoever to contact Opposer on this matter. No appearance in this proceeding by counsel has been made on behalf of Applicant. Accordingly, Opposer serves the instant motion for default on Applicant's counsel of record with respect to the subject application.

III. ARGUMENT

Pursuant to T.B.M.P. § 508 and 37 C.F.R. § 2.106(a), Applicant is in default for failure to timely file and serve an Answer to Opposer's Notice of Opposition. Accordingly, Opposer is entitled to an order of default against Applicant and an order dismissing with prejudice the above-captioned matter in favor of Opposer.¹

¹ Under the circumstances, Opposer is understandably reluctant to embark on costly and unnecessary discovery. The scheduling order issued by the Board provides that discovery closes on March 16, 2004. In the unlikely event that: (1) Applicant opposes the instant motion; (2) Applicant proffers a plausible explanation which excuses its delay; and (3) the Board grants an extension of time in which to file its Answer and orders that this case proceed, Opposer requests that discovery be re-set so that Opposer is not prejudiced in any way by Applicant's delay.

IV. CONCLUSION

For the foregoing reasons, Opposer respectfully requests that the Board enter an order of default judgment against Applicant and dismiss the above-captioned proceeding with prejudice in favor of Opposer. Opposer further respectfully requests that the Board issue an order refusing registration to U.S. Servicemark Application Serial No. 75/559,716 for the mark GO2AMERICA INTERNET.

Dated: New York, New York
October 23, 2003

By:



Virginia R. Richard, Esq.
Lana C. Fleishman, Esq.
WINSTON & STRAWN
200 Park Avenue
New York, New York 10166
(212) 294-6700

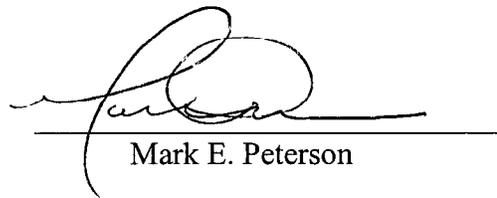
**Attorneys for Opposer
GoAmerica, Inc.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for Default Judgment was served on Applicant by means of mailing the same to Applicant's counsel of record with respect to the subject application as follows on October 23, 2003:

VIA FIRST CLASS MAIL

Thomas P. Macken, Esq.
Ruder Ware & Michler LLSC
500 Third Street
P.O. Box 8050
Wausau, WI 54402-8050



Mark E. Peterson