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

Proceeding	91163166
Party	Plaintiff CELLO HOLDINGS, L.L.C. ,
Correspondence Address	KATHLEEN E. FULLER DOW LOHNES & ALBERTSON, PLLC 1200 NEW HAMPSHIRE AVENUE, N.W., SUITE 800 WASHINGTON, DC 20036
Submission	Motion for Default Judgment
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Date	03/11/2005
Attachments	CellovKynardMotionforDefault.pdf (4 pages)

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

In the matter of
Serial No.: 76/127,048
Date of Publication: July 20, 2004 at Page TM 339
Mark: CELO SPORT

CELLO HOLDINGS, L.L.C.)	
)	
Opposer,)	
)	Opposition No. 91163166
v.)	
)	
WYLIE J. KYNARD,)	
)	
Applicant.)	
)	

MOTION FOR ENTRY OF DEFAULT AND JUDGMENT BY DEFAULT

Opposer, Cello Holdings, L.L.C. (“Cello Holdings”), by its undersigned counsel, moves for an Order entering a default and a judgment by default in the above-referenced opposition proceeding against Applicant Wylie J. Kynard. The grounds for this motion are as follows:

On November 30, 2004, the Trademark Trial and Appeal Board entered a Scheduling Order setting a deadline of January 9, 2005 for Applicant to file an answer to Opposer’s Notice of Opposition. Applicant failed to submit an answer. On January 13, 2005, the Trademark Trial and Appeal Board entered a new Scheduling Order setting a deadline of February 22, 2005 for Applicant to file an answer. Applicant failed to submit an answer by the deadline set by the Board, and to date Applicant has not filed an answer or a response.

Applicant is currently in default and an entry of default should be entered against Applicant pursuant to TBMP § 508 and 37 C.F.R. § 2.114(a). Moreover,

Applicant's failure to answer the allegations contained in the Notice of Opposition is equivalent to admitting the truth of the facts contained therein and is grounds for judgment by default. *See Wells Cargo, Inc. v. Wells Cargo, Inc.*, 606 F.2d 961, 962 n.3, 203 U.S.P.Q. 564, 566 n.3 ("a default judgment reflects a finding that a party's conduct amounts to admission of truth in his opponent's allegations"). *See also Old Grantian Co. v. William Grant & Sons, Ltd.*, 361 F.2d 1018, 1021-22, 53 C.C.P.A. 1257, 1260-61, 150 U.S.P.Q. 58, 60 (1966) (holding that failure to answer a notice of opposition is equivalent to an admission of the truth of the facts stated in the complaint, and is all that is necessary to support the judgment (citing *Last Chance Mining Co. v. Tyler Mining Co.*, 157 U.S. 683, 691, 15 S. Ct. 733, 736, 39 L.Ed. 859 (1895))).

In this case, the Notice of Opposition unequivocally states that Opposer owns the marks CELLO[®] and CELLO[®] (Stylized), Notice of Opposition at ¶¶ 3-5, that Opposer's legal rights with respect to its CELLO[®] marks are superior to Applicant's alleged rights with respect to the CELO SPORT mark, Notice of Opposition at ¶ 9, that the respective marks are confusingly similar and are likely to cause consumer confusion, Notice of Opposition ¶¶ 11-14, and that Opposer will be damaged if Applicant is granted a registration for the CELO SPORT mark, Notice of Opposition at ¶¶ 15-17. Applicant's admission of these facts by virtue of its failure to answer is all that is needed to sustain a default judgment against Applicant. *See Old Grantian Co.*, 361 F.2d at 1022, 53 C.C.P.A. at 1261, 150 U.S.P.Q. at 60.

Pending a ruling on this Motion, Opposer additionally requests that the discovery cut-off in this matter be extended and that the date for close of discovery,

currently set for August 1, 2005, be extended until at least 150 days after a ruling on this motion.

WHEREFORE, Opposer respectfully requests than an Order be entered directing an entry of default and judgment by default against Applicant Wylie J. Kynard and granting the relief sought by Opposer, namely, that Application Serial No. 76/127,048 be denied.

Respectfully submitted,

CELLO HOLDINGS, L.L.C.

By: /Mitchell H. Stabbe/
Mitchell H. Stabbe
Mira J. Koplovsky
Its Attorneys

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March 11, 2005

CERTIFICATE OF DELIVERY

I hereby certify that this Motion for Entry for Default and Judgment by Default is being filed electronically with the Trademark Trial and Appeal Board Trademark Trial and Appeal Board, U.S. Patent and Trademark Office, Madison East, Concourse Level Room C 55, 600 Dulany Street, Alexandria, VA 22314, via the Electronic System for Trademark Trials and Appeals (<http://estta.uspto.gov>) this 11th day of March, 2005.

/Mitchell H. Stabbe/

Mitchell H. Stabbe

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion for Entry of Default and Judgment by Default is being mailed by first class mail, postage prepaid, to the following person at his said address, this 11th day of March, 2005:

Mr. Wylie J. Kynard
1434 NW 81st Terrace
Plantation, Florida 33322-4663

/Mitchell H. Stabbe/

Mitchell H. Stabbe

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