

ESTTA Tracking number: **ESTTA43239**

Filing date: **08/26/2005**

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

<b>Proceeding</b>	91165451
<b>Party</b>	Defendant S.A.S.C.O. TRADING, INC. S.A.S.C.O. TRADING, INC. 1359 Broadway, Suite 1808 New York, NY 10018
<b>Correspondence Address</b>	EZRA SUTTON EZRA SUTTON, P. A. PLAZA 9, 900 ROUTE 9 SUITE 201 WOODBIDGE, NJ 07095
<b>Submission</b>	Opposition to Motion for Default Judgment and Answer to Notice of Opposition
<b>Filer's Name</b>	Ezra Sutton, Esq.
<b>Filer's e-mail</b>	<a href="mailto:jsutton@ezrasutton.com">jsutton@ezrasutton.com</a>
<b>Signature</b>	/Ezra Sutton/
<b>Date</b>	08/26/2005
<b>Attachments</b>	Opposition to Motion for Def Judg and Answer to Opposition 8-24-05.pdf ( 5 pages )

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

In the Matter of Application Serial No. 76/575,509

Filed: February 13, 2004

Published on March 29, 2005

Mark: **PF (AND DESIGN) - Class 025**

---

NEW BALANCE ATHLETIC SHOE, INC. :

Opposer, :

vs. : Opposition No. 91/165,451

S.A.S.C.O. TRADING, INC. :

Applicant. : August 24, 2005

---

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, Virginia 22313-1451  
Box -TTAB- No fee

**OPPOSITION TO MOTION FOR DEFAULT JUDGMENT**

On August 5, 2005, Opposer filed a Motion For Default Judgment under Fed. R. Civ. P. 55(a) because no Answer was of record herein.

Enclosed is Applicant's Answer and defenses to the Notice of Opposition. Applicant submits that it was overseas when the Notice of Opposition was filed and did not have an opportunity to Answer the Notice of Opposition in a timely fashion. Answer was due July 16, 2005, however, Applicant's principal did not return to this country until August 2005.

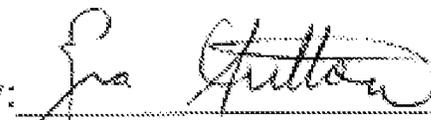
Applicant has good cause why default judgment should not be entered against it. See Fed. R. Civ. P. 55(c); TBMP Section 312.01 (2d ed. rev. 2004).

The determination of whether default judgment should be entered against a party lies within the sound discretion of the Board. See, e.g. Identicon Corp. v. Williams, 195 USPQ 447, 449 (Comm'r 1977). In exercising that discretion, the Board is mindful of its policy to decide cases on their merits where possible. Accordingly, the Board only reluctantly enters judgment by default for failure to timely answer and tends to resolve any doubt on the matter in favor of the defendant. See TBMP Section 312.02 (2d ed. Rev. 2004).

Keeping in mind the Board's policy of deciding cases on the merits, where possible, and resolving doubt with regard to failure to timely answer in favor of the defendant, the Board, in its discretion, is requested to find that Applicant's filing of this late Answer due to being overseas over the last 2 months constitutes good cause to not grant the default Judgment. Accordingly, Applicant's Answer filed herewith should be accepted. No prejudice has resulted due to this short delay.

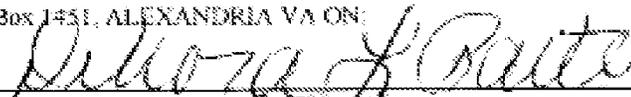
Respectfully submitted,  
**EZRA SUTTON, P.A.**  
Attorneys for Applicant

Dated: August 24, 2005

By:   
EZRA SUTTON, Esq.  
Reg. No. 25.770

JS/dlp

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING  
DEPOSITED WITH THE UNITED STATES POSTAL SERVICE  
AS FIRST-CLASS MAIL IN AN ENVELOPE ADDRESSED TO:  
COMMISSIONER FOR TRADEMARKS  
P.O. Box 1451, ALEXANDRIA VA ON:

  
\_\_\_\_\_  
(Date)

August 24, 2005

(Date)

SASCO 10.2-003

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

In the Matter of Application Serial No. 76/575,509

Filed: February 13, 2004

Published on March 29, 2005

Mark: **PF (AND DESIGN) - Class 025**

---

NEW BALANCE ATHLETIC SHOE, INC. :

Opposer, :

vs. :

Opposition No. 91/165,451

S.A.S.C.O. TRADING, INC. :

Applicant. :

August 24, 2005

---

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, Virginia 22313-1451  
Box TTAB-No fee

**ANSWER TO NOTICE OF OPPOSITION**

Sir:

Applicant, **S.A.S.C.O. Trading**, through its attorneys, answers the Notice of Opposition, as follows:

1) Applicant does not have sufficient information to admit or deny the allegations of paragraphs 3,4,5 & 6 and leaves Opposer to its proofs.

2) Applicant admits to paragraphs 1 & 2 of the Notice of Opposition.

**Continued on Page 2**

3) Applicant denies the allegations in paragraphs 7, 8, 9, 10 & 11.

**AFFIRMATIVE DEFENSES**

4) Opposer's allegations are barred by laches, acquiescence, and estoppel.

5) Opposer's trademark rights, if any, are limited to the footwear listed in its registrations, which are not sold in the same channels of trade, to the same customers, or in the same stores as the clothing products bearing Applicant's mark **PF (and Design)**.

6) Applicant's mark **PF (and Design)** is not confusingly similar to Opposer's registered marks since it has a distinguishable appearance, and commercial impression, including design elements not found in the Opposer's registered marks.

7) Opposer cannot claim exclusive rights to all variations of marks in Class 025 with the term **PF**, based on extensive third-party usage of such marks in Opposer's field of goods.

Respectfully submitted,  
**EZRA SUTTON, P.A.**  
Attorneys for Applicant

By:   
EZRA SUTTON, Esq.  
Reg. No. 25,770

Dated: August 24, 2005  
Plaza 9, 900 Route 9  
Woodbridge, New Jersey 07095  
(732) 634-3520 PII/3511 FAX

JS/dlp

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

In the Matter of Application Serial No. 76/575,509

Filed: February 13, 2004

Published on March 29, 2005

Mark: **PF (AND DESIGN) - Class 025**

NEW BALANCE ATHLETIC SHOE, INC. :

Opposer, :

vs. :

Opposition No. 91/165,451

S.A.S.C.O. TRADING, INC. :

Applicant. :

August 24, 2005

Commissioner for Trademarks

P.O. Box 1451

Alexandria, Virginia 22313-1451

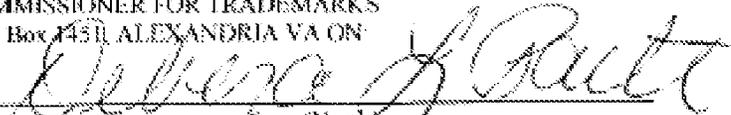
Box -TTAB- No fee

CERTIFICATE OF SERVICE

I, DEBORA L. PARTE, certify that applicant's **OPPOSITION TO MOTION FOR DEFAULT JUDGMENT and ANSWER TO NOTICE OF OPPOSITION** was served by fax and first-class, postage prepaid mail on this 24th day of August, 2005 upon the attorneys for the Opposer, namely, Jeremiah Lynch, Esq. of Lahve & Cockfield, LLP, 28 State Street, Boston, Massachusetts 02109-1784.

  
DEBORA L. PARTE

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING  
DEPOSITED WITH THE UNITED STATES POSTAL SERVICE  
AS FIRST-CLASS MAIL IN AN ENVELOPE ADDRESSED TO:  
COMMISSIONER FOR TRADEMARKS  
P.O. Box 1451, ALEXANDRIA VA ON

  
(Name)

August 24, 2005

(Date)