

**UNITED STATES PATENT AND TRADEMARK OFFICE**  
**Trademark Trial and Appeal Board**  
**P.O. Box 1451**  
**Alexandria, VA 22313-1451**

Mailed: October 4, 2006

Opposition No. **91167219**

CYI, Inc.

v.

Ahlert, Gary

Cheryl S. Goodman, Interlocutory Attorney:

On November 15, 2005, applicant filed what appeared to be an answer to the notice of opposition. This paper was not served on opposer as required by Trademark Rule 2.119. Thereafter, on May 27, 2006, the Board issued an order advising applicant that its answer to the notice of opposition was informal as it did not comply with the requirements of Fed. R. Civ. P. 8(b). The Board allowed applicant time to file a proper answer.

However, applicant never filed a proper answer, and on August 30, 2006, the Board issued a notice of default for failure of applicant to file a proper answer. The Board allowed applicant time to show cause why default judgment should not be entered. On September 8, 2006, applicant filed its response to the notice of default, which the Board

notes, was not served on opposer as required by Trademark Rule 2.119.<sup>1</sup>

In support of its motion to set aside default, applicant advises that it never received a copy of the Board's order dated May 27, 2006.<sup>2</sup>

Inasmuch as applicant never received the Board's order dated May 27, 2006, notice of default is set aside.

Applicant is allowed until **THIRTY DAYS** from the mailing date of this order to provide a proper answer as set forth in the Board's order dated May 27, 2006 which accompanies this order.<sup>3</sup>

As noted above, applicant's communications to the Board have not been in compliance with Trademark Rule 2.119. Applicant is advised that pursuant to Trademark Rules 2.119(a) and (b), every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney, and proof of such service must be made before the paper will be considered by the Board. Consequently, copies of all papers which applicant may subsequently file in this proceeding, including its answer to the notice of opposition, must be accompanied by a

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<sup>1</sup> To expedite matters, the Board is providing a copy of this communication to opposer. Applicant is advised that strict compliance with Trademark Rule 2.119, as further explained in this order, is required with all filings with the Board.

<sup>2</sup> Applicant has also confirmed his address as well as the correct spelling of his name.

<sup>3</sup> Copies of the Board's orders and all papers filed in this proceeding are available electronically at <http://ttabvue.uspto.gov/ttabvue>.

signed statement indicating the date and manner in which such service was made. The statement, whether attached to or appearing on the paper when filed, will be accepted as prima facie proof of service.<sup>4</sup>

As also noted in the Board's order dated May 27, 2006, which accompanies this order, applicant is proceeding pro se. While Patent and Trademark Rule 10.14 permits any person to represent itself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in an opposition proceeding to secure the services of an attorney, who is familiar with such matters.

If applicant does not retain counsel, he will be expected to familiarize himself with the rules governing this proceeding and to comply with all applicable rules and Board practices during the prosecution of this case. Applicant is advised that no special treatment is afforded parties that are proceeding pro se and strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel.

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<sup>4</sup> The suggested format for a certificate of service is as follows:

I hereby certify that a true and complete copy of the foregoing (insert title of submission) has been served on (insert name of opposing counsel or party) by mailing said copy on (insert date of mailing), via First Class Mail, postage prepaid (or insert other appropriate method of delivery) to: (set out name and

For applicant's information, the Trademark Rules of Practice, other federal regulations governing practice before the Patent and Trademark Office, and many of the Federal Rules of Civil Procedure govern the conduct of this opposition proceeding. The Trademark Rules are codified in part two of Title 37 of the Code of Federal Regulations (also referred to as the CFR), and the CFR and the Federal Rules of Civil Procedure are likely to be found in most law libraries, and may be available at some public libraries. Finally, the Board's manual of procedure will be helpful and may be accessed at <http://www.uspto.gov> by making the connection from that main page to TTAB materials.

Discovery and trial dates are reset as follows:

DISCOVERY PERIOD TO CLOSE:	<b>December 3, 2006</b>
30-day testimony period for party in position of plaintiff to close:	<b>March 3, 2007</b>
30-day testimony period for party in position of defendant to close:	<b>May 2, 2007</b>
15-day rebuttal testimony period for party in position of plaintiff to close:	<b>June 16, 2007</b>

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

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address of opposing counsel or party).

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.<sup>5</sup>

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<sup>5</sup> As previously noted in the Board's order dated May 27, 2006, applicant has advised that the parties are currently involved in civil litigation in the Southern District of New York (04-CV-04696). The parties should provide a copy of the civil complaint to the Board so that the Board can determine if the civil action will have a bearing on the proceeding.