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Filing date: **07/25/2006**

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

Proceeding	91170897
Party	Plaintiff Exist, Inc. Exist, Inc. 1650 N.W. 23rd Avenue, Bay A Fort Lauderdale, FL 33311 UNITED STATES
Correspondence Address	Robert Kain Fleit, Kain, Gibbons, Gutman, Bongini & Bianco, P.L. 750 Southeast Third Avenue Suite 100 Ft. Lauderdale, FL 33316 UNITED STATES rkain@focusnip.com
Submission	Motion for Default Judgment
Filer's Name	Robert C. Kain Jr.
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Date	07/25/2006
Attachments	mot-default-by-Exist-072506.pdf (2 pages)(27357 bytes)

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

In the matter of application Serial No. 78-663,852
Published in the *Official Gazette* at TM 574
on May 9, 2006; Mark: COEXIST

Exist, Inc.

Opposer/Plaintiff,

Opposition No. 91170897

v.

Coexist, LLP.

Applicant/Defendant

Opposer's Motion For Default

Opposer, Exist, Inc. (herein "Exist"), hereby moves for entry of default judgment in this opposition proceeding against Applicant/Defendant, Coexist, LLP (herein "Coexist"), for failing to file an answer within the time set for such filing by the Trademark Trial and Appeals Board (TTAB). Rule 2.106 states that "If no answer is filed within the time set, the opposition may be decided as in case of default." 37 C.F.R. § 2.106(a). The parties agreed that Coexist could file its answer by July 24, 2006. See "Motion to Extend Time to Answer Granted" order dated June 16, 2006, by the TTAB.

On July 24, Coexist's counsel filed a Motion to Withdraw as counsel and Coexist did not file an answer.

Exist has propounded discovery requests and those requests have not been answered nor objected to. Exist has the right to inquire, via discovery, the dates of first use of the mark subject to the application (COEXIST) and supporting documentation.

The failure of Coexist to file an answer and otherwise respond to Exist's discovery requests ignores the rules of procedure for this opposition proceeding and delays the TTAB decision of Exist's petition to oppose registration of the mark COEXIST.

WHEREFORE, Exist requests that the TTAB enter a default in this action.

EXIST, INC.

Date: July 25, 2006

By: /RobertKain/
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was furnished by U.S. mail, postage pre-paid, this July 25, 2006 to: counsel for Applicant/Defendant Alastair J. Warr Krieg Devault LLP., 1 Indiana Sq Ste 2800, Indianapolis, IN 46204-2017 and to Christopher Tierney, Exec. Partner, Coexist, 102 Clinton Street, Suite 2, New York, N.Y. 10002.

/RobertKain/
Robert C. Kain, Jr.