

ESTTA Tracking number: **ESTTA125494**

Filing date: **02/16/2007**

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

Proceeding	91172879
Party	Plaintiff BIG DOG HOLDINGS, INC. Big Dog Holdings, Inc. BIG DOG HOLDINGS, INC. Big Dog Holdings, Inc. Big Dog Holdings, Inc. ,
Correspondence Address	Kurt Koenig Koenig & Associates 226 E. Canon Perdido St., Suite M Santa Barbara, CA 93101 UNITED STATES Kurt@incip.com
Submission	Motion for Default Judgment
Filer's Name	Kurt Koenig
Filer's e-mail	Kurt@incip.com
Signature	/Kurt Koenig/
Date	02/16/2007
Attachments	2007_02_16_13_11_17.pdf (9 pages)(899135 bytes)

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

In the Matter of:
Application Serial No. 78511967
For the Mark BDOG
Filed: November 5, 2004
Published May 16, 2006

_____)	
BIG DOG HOLDINGS, INC.,)	
)	
OPPOSER,)	
)	
v.)	Opposition No. 91172879
)	
JULIETTE PENEGRE,)	
)	
APPLICANT.)	
_____)	

**OPPOSER’S MOTION FOR ENTRY OF DEFAULT JUDGMENT FOR FAILURE OF
APPLICANT TO RESPOND TO THE NOTICE OF OPPOSITION
WITHIN THE TIME ALLOWED**

Pursuant to FRCP 55(a) and 55(b), TBMP Sections 317.01 and 508 and Rule 2.114(a) of the Trademark Rules of Practice, Big Dog Holdings, Inc. (“Opposer”) files this motion for the entry of default judgment for the failure of Juliette Penegre (“Applicant”) to respond to the Notice of Opposition within the time allowed by the Trademark Trial and Appeal Board (the “Board”).

OPPOSER’S BRIEF AND AFFIDAVIT IN SUPPORT OF MOTION

Attached hereto is an Affidavit of Kurt Koenig, attorney for Opposer, stating that on September 13, 2006 he mailed and filed with the Board a Notice of Opposition opposing the registration of Application Serial No. 78511967 for the mark BDOG & Design (“Application”) on behalf of Opposer. (Koenig Affidavit, para. 2)

On September 14, 2006, the Board mailed a copy of the Notice of Opposition and notice of trial dates (“Notice”) to both Applicant and Opposer’s counsel advising each party that the Notice of Opposition had been filed and outlining the discovery and testimony schedule for the opposition proceeding. The Notice further indicated that Applicant was allowed forty (40) days from the

mailing date thereof to file a response to the Notice of Opposition with the Board. (Koenig Affidavit, para. 3; Exh. A to Affidavit of Kurt Koenig).

Applicant's response to the Notice of Opposition was due on or before October 24, 2006. However, Applicant's answer or other response to the Notice of Opposition was not filed with the Board or served upon Opposer at any time prior to the preparation and filing of this Motion. (Koenig Affidavit, para. 4).

Under TMEP Section 317.01 and Rule 2.114(a) of the Trademark Rules of Practice, if an applicant fails to file an answer to a complaint during the time allowed therefor, the Board, on its own initiative, may issue a Notice of Default allowing the Applicant twenty (20) days from the mailing date of the notice in which to show cause why default judgment should not be entered against it. Prior to the filing of this Motion, the Board had not yet issued a Notice of Default. Furthermore, under TBMP Sections 317.01 and 508, if the Board has not issued a notice of default, the plaintiff may file a motion for default judgment in which case the motion may serve as a substitute for the Board's issuance of a notice of default.

Since Applicant's answer or other response to the Notice of Opposition was not timely filed within the forty (40) day period ending October 24, 2006, Opposer moves for a Default Judgment in this matter.

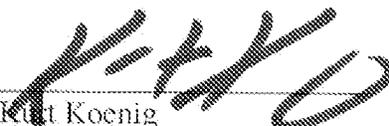
Opposer respectfully requests that this Motion be granted by the Board and that the Application be refused registration as requested in the Notice of Opposition.

Respectfully submitted,

KOENIG & ASSOCIATES
Attorneys for Opposer

Dated: February 16, 2007

By:


Kurt Koenig
226 E. Canon Perdido, Suite M
Santa Barbara, CA 93101
Tel: 805-965-4400
Fax: 805-564-8262
Email: Kurt@incip.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
**“OPPOSER’S MOTION FOR ENTRY OF DEFAULT JUDGMENT FOR FAILURE OF
APPLICANT TO RESPOND TO THE NOTICE OF OPPOSITION
WITHIN THE TIME ALLOWED”** was served on:

Ms. Juliette PENEGRE
13 RUE GANNERON
PARIS, 75018

Mr. Robert J. Patch
Young & Thompson
745 South 23rd Street
Suite 200
Arlington, VA 22202

via United States first-class mail, postage prepaid, on February 16, 2007.


Kurt Koenig

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being transmitted
by electronic mail to the United States Patent and Trademark Office
on the date shown below.


KURT KOENIG

Dated: February 16, 2007

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

In the Matter of:
Application Serial No. 78511967
For the Mark BDOG
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BIG DOG HOLDINGS, INC.,)	
)	
OPPOSER,)	
)	Opposition No. 91172879
v.)	
)	
Juliette Penegre,)	
)	
APPLICANT.)	
_____)	

**AFFIDAVIT OF KURT KOENIG IN SUPPORT OF OPPOSER'S MOTION FOR ENTRY
OF DEFAULT JUDGMENT FOR FAILURE OF APPLICANT TO RESPOND TO THE
NOTICE OF OPPOSITION WITHIN THE TIME ALLOWED**

Kurt Koenig, being duly sworn, deposes and says:

1. I am an attorney with the the law firm of Koenig & Associates located at 226 E. Canon Perdido, Suite M, Santa Barbara, California, 93101, attorneys for Opposer, Big Dog Holdings, Inc. ("Opposer").
2. I am the attorney who prepared and mailed the Notice of Opposition to the Trademark Trial and Appeal Board ("Board") on September 13, 2006 in connection with Application Serial No. 78511967 for the mark BDOG ("Application").
3. I received a notice of trial dates ("Notice") from the Board notifying both Opposer and Applicant that Opposer's Notice of Opposition had been filed requesting the Board to refuse registration of the Application. The Board mailed the Notice to both Opposer and Applicant on September 14, 2006 informing Applicant that she had forty (40) days to respond to the Notice of Opposition. A copy of the Notice is attached hereto as Opposer's Exhibit A.
4. Applicant's response to the Notice of Opposition was due on or before October 24, 2006. Applicant, however, has not filed with the Board or served upon Opposer at any time prior to

the preparation and filing of Opposer's Motion for Default Judgment its response to the Notice of Opposition.

5. Applicant's response to the Notice of Opposition was not filed.

Dated: February 16, 2007

By:


Kurt Koehn

EXHIBIT A
TO AFFIDAVIT OF KURT KOENIG

**Copy of Notice Regarding Commencement of Opposition Proceeding
Issued by the Trademark Trial and Appeal Board
on September 14, 2006**

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

Mailed: September 14, 2006

Opposition No. 91172879

Serial No. 78511967

BIG DOG HOLDINGS, INC

v.

PENEGRE, Juliette

PENEGRE, Juliette

13 RUE GANNERON
PARIS, FRANCE, 75018

HAROLD ROSS: LEGAL ASSISTANT

A notice of opposition to the registration sought in the above-identified application has been filed. A copy of the notice is attached.

ANSWER IS DUE FORTY DAYS after the mailing date hereof.
(See Trademark Rule 2.196 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that affect the rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003); Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003). Notices concerning the rules changes, as well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), are available at www.uspto.gov/web/offices/dcom/ttab/.

The parties are particularly referred to Trademark Rule 2.126 pertaining to the form of submissions. Paper submissions, including but not limited to exhibits and depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.

Discovery and testimony periods are set as indicated below. 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.

Discovery period to open: 10/4/06

Discovery period to close: 4/2/07

30-day testimony period for party
in position of plaintiff to close: 7/1/07

30-day testimony period for party
in position of defendant to close: 8/30/07

15-day rebuttal testimony period
to close: 10/14/07

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

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "*Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board*," 1235 TMOG 68 (June 20, 2000). The notice is available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

New Developments at the Trademark Trial and Appeal Board

TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at <http://estta.uspto.gov>. Images of TTAB proceeding files can be viewed using TTABVue at <http://ttabvue.uspto.gov>.