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

Proceeding	91180485
Party	Plaintiff Swat.Fame, inc.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SWAT.FAME, INC.,

Opposer,

vs.

MELVINA GOREN,

Applicant.

OPPOSITION NO. 91180485

SERIAL NO. 76/652351

**OPPOSER'S REQUEST TO GRANT MOTION AS CONCEDED**

**I. INTRODUCTION**

Opposer Swat.Fame, Inc. ("Opposer") hereby requests that the TTAB grant as conceded its Motion To (1) Strike Answer In Its Entirety And Enter Default, Or In The Alternative, For A More Definite Statement And To Strike Impertinent Allegations; And (2) Set Aside Order Granting "Request To Extend Time" (the "Motion"), based on Applicant Melvina Goren's ("Applicant") failure to submit a brief in response to the Motion.

**II. FACTUAL SUMMARY**

Opposer's Motion was filed on February 8, 2008 with a Certificate of Service proving that service was timely made by First Class Mail on that date. (Declaration of William A. Finkelstein in support hereof ("Finkelstein Decl.") at ¶ 2.) Pursuant to 37 CFR § 2.127(c), Applicant was required to file any response to the Motion within 20 days (15 days plus 5 days for service by first class mail, 37 CFR § 2.119(c)), which means that Applicant's deadline to file

a response was February 28, 2008. That date has now come and gone, and no response has been filed or served on Opposer or its counsel nor has any extension of time to file an opposition brief been requested by Applicant (and none has therefore been granted by the TTAB). (Id. at ¶ 3.) Indeed, since the Motion was filed Opposer has not been contacted at all by Applicant. (Id. at ¶ 4.)

Opposer can only assume at this juncture that Applicant has abandoned her application and is no longer interested in participating in these proceedings. Indeed, as noted in the Motion itself, Applicant's participation thus far has been marked by the filing of a late Answer that is patently defective in all respects, and the failure to serve Opposer with Applicant's "Request to Extend Time to Answer," which was also deficient both procedurally and substantively.

### **III. THE TTAB SHOULD TREAT THE MOTION AS CONCEDED**

The TTAB has the power to treat an unopposed motion as conceded, even when that motion is dispositive of the proceedings. 37 CFR § 2.127(a) ("When a party fails to file a brief in response to a motion, the Board may treat the motion as conceded.") The power to grant as conceded an unopposed motion is an essential mechanism provided by the TTAB's rules in order to ensure and enforce the orderly conduct of its proceedings. Chesebrough-Pond's Inc. v. Faberge, Inc., 618 F.2d 776, 205 USPQ 888, 891 (CCPA 1980) ("Litigation is run by rules designed to assure orderly conduct of the proceedings. One of those rules is the timely submission of briefs unless an extension of time has been granted.")

In light of these important policy considerations, the TTAB may grant an unopposed motion as conceded even if the unopposed motion is dispositive. Chesebrough-Ponds, Inc., 618 F.2d at 780 (CCPA affirms the TTAB's decision to treat a dispositive summary judgment motion as conceded.) See also Central Manufacturing Inc. v. Third Millennium

Technology, Inc., 61 USPQ2d 1210, 1211 (TTAB 2001) (treating motion to dismiss as conceded for failure to file opposition); Boston Chicken Inc. v. Boston Pizza International Inc. 53 USPQ2d 1053, 1054 (TTAB 1999) (motion for summary judgment of counterclaims granted as conceded and counterclaims dismissed with prejudice.)

In view of Applicant's failure to oppose the Motion, Opposer respectfully requests that the TTAB exercise its discretion to treat the Motion as conceded, and grant the relief requested in the Motion by (1) vacating its January 22, 2008 Order (granting the "Request to Extend Time" as conceded), (2) entering a default in Opposer's favor, (3) and sustaining Opposer's Opposition.

#### IV. CONCLUSION

For the aforementioned reasons, Opposer respectfully requests that the TTAB grant the relief requested herein.

DATED: March 14, 2008

DREIER STEIN KAHAN BROWNE WOODS GEORGE LLP

By 

William A. Finkelstein  
Attorney for Opposer

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**DECLARATION OF WILLIAM A. FINKELSTEIN**

I, William A. Finkelstein, declare:

1. I am an attorney duly licensed to practice before the federal and state courts in the State of California, County of Los Angeles. I am a partner in Dreier Stein Kahan Browne Woods George LLP, counsel for Opposer Swat.Fame, Inc. ("Opposer.") I make this Declaration in support of Opposer's Request To Grant Motion As Conceded. I have personal knowledge of the matters stated herein and, if called as a witness, I would and could competently testify thereto.

2. On February 8, 2008, I personally filed and served Opposer Swat.Fame, Inc.'s ("Opposer") Motion To (1) Strike Answer In Its Entirety And Enter Default, Or In The Alternative, For A More Definite Statement And To Strike Impertinent Allegations; And (2) Set Aside Order Granting "Request To Extend Time" (the "Motion") upon Patricia Lawrence Kolaras, counsel in these proceedings for Applicant Melvina Goren ("Applicant.")

3. Since the Motion was filed, no response by Applicant has been filed or served on Opposer or its counsel nor has Applicant filed a request to extend her time to file a brief in opposition to the Motion.

4. Since filing the Motion I have not been contacted at all by Applicant or her counsel.

I declare under laws of the United States of America that the foregoing is true and correct. Executed on March 14, 2008, at Santa Monica, California.

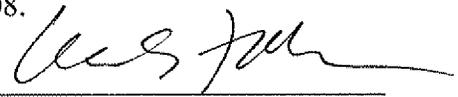


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William A. Finkelstein

Certificate of Electronic Transmission

I hereby certify that this Request To Grant Motion As Conceded is being transmitted by electronic mail to the Trademark Trial and Appeal Board through its electronic filing system located at <http://estta.uspto.gov> on March 14, 2008.



William A. Finkelstein

Certificate of Service

I hereby certify that this Request To Grant Motion As Conceded was served on Applicant by delivering a true and correct copy thereof to Applicant's Attorney at her address of record by First Class Mail addressed to Patricia Lawrence Kolaras, PLK Law Group, 390 Amwell Road, Bldg 3, Suite 313, Hillsborough, NJ 08844 , on March 14, 2008.



William A. Finkelstein