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

Proceeding	91182357
Party	Plaintiff Converse Inc.
Correspondence Address	Converse Inc. One High Street North Andover, MA 01845 UNITED STATES ip@gjn.com
Submission	Motion for Default Judgment
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Date	04/09/2008
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Converse, Inc.,)	
)	
Opposer,)	
)	
vs.)	
)	Opposition No. 91182357
Ilias Pepropoulos)	
)	
Applicant.)	
)	
)	
)	

MOTION FOR DEFAULT JUDGMENT OR, IN THE ALTERNATIVE, TO STRIKE
“ANSWER,” TO CONSTRUE ALL ALLEGATIONS SET FORTH IN THE NOTICE
OF OPPOSITION AS ADMITTED AND TO SUSPEND PROCEEDINGS PENDING
RESOLUTION OF THIS MOTION

COMES NOW Opposer, Converse Inc. ("Converse"), and moves that a Default Judgment be entered against the Applicant, Ilias Pepropoulos¹, and in the alternative, if the Board deems Applicant’s March 14, 2008, communication to be an “Answer” or otherwise sufficient to avoid a default judgment, to strike the “Answer,” to construe all allegations set forth in the Notice of Opposition as admitted and to suspend proceedings pending resolution of this motion, and as grounds thereof states:

1. On February 28, 2008, Converse filed its Notice of Opposition with the United States Patent and Trademark Office Trademark Trial and Appeal Board against trademark application number 77/220272 for a design mark comprising a Star-inCircle Design owned by Ilias Pepropoulos.

¹ According to the U.S. Patent and Trademark Office website, the subject application identifies the Applicant and correspondent as Ilias Pepropoulos. Likewise, the Applicant is listed in the OG publication and the subject opposition records as Ilias Pepropoulos. However, the signatory on the application and the March 14, 2008, communication, which was presumably submitted on behalf of Applicant, is identified as Ilias Petropoulos. To avoid confusion, Converse will refer herein simply to “Applicant.”

2. The Board instituted proceedings and issued an order on February 8, 2008, setting the discovery and trial dates for the Opposition.

3. In the Board's February 8, 2008, Order, and in accordance with the Trademark Rules, Applicant was ordered to answer the Notice of the Opposition within forty (40) days from the date of mailing of the Order. As stated in the Order, Applicant's Answer was therefore due on or before March 19, 2008.

4. To date, Converse has not received service of Applicant's Answer, and therefore concludes that the Applicant is in default.

5. Converse, however, on April 8, 2008, checked the U.S. Patent and Trademark Office website and discovered a copy of a communication from Applicant addressed to the Board and bearing a certificate of mailing dated March 14, 2008 ("March 14 Communication"). A copy of this March 14 Communication is enclosed. The March 14 Communication does not represent itself as an answer and for the reasons that follow, the March 14 Communication cannot be construed to be an answer.

6. TBMP §311.01(c) states that a copy of the Answer "**must** be served by the defendant upon the attorney for the plaintiff . . . [and] **must bear proof** (e.g., a certificate of service . . .) **that such service has been made before the paper will be considered by the Board.** [emphasis added]" Applicant's March 14 Communication was not served and did not contain a certificate of service or any other proof of service. Thus, Applicant's March 14 Communication cannot be considered by the Board and so cannot constitute an Answer.

7. TBMP §311.01(a) states, "An Answer **must** contain admissions and/or denials of the allegations in the complaint . . . [emphasis added]" 37 C.F.R. §2.106(b)(1)

states, “An answer *shall* state in short and plain terms the applicant’s defenses to each claim asserted and shall admit or deny the averments upon which the opposer relies. [emphasis added]” The March 14 Communication contained no such admissions or denials. Rather it is mere argumentation, stating simply that Applicant’s mark is different from Converse’s mark (without identifying which mark or addressing Converse’s family of marks), that it “in no way will create confusion in the marketplace” and that Applicant is “curious” as to whether Converse has pursued other parties for alleged use of certain logos. TBMP §311.02(a) states, “The defendant should not argue the merits of the allegation in a complaint but rather should state, as to each of the allegations contained in the complaint, that the allegation is either admitted or denied. . . . If the complaint consists of numbered paragraphs setting forth the basis of plaintiff’s claim of damage, the defendant’s admissions or denials should be made in numbered paragraphs corresponding to the numbered paragraphs in the complaint.” Converse’s Notice of Opposition contained 22 numbered averments and two Counts, including a count for dilution as well as a count for likelihood of confusion. The March 14 Communication does not admit or deny the 22 numbered averments in the Notice of Opposition and does not address the count of dilution. Thus, it should not be accepted as an answer.²

8. If the Board, nevertheless, decides to accept the March 14 Communication as an “Answer” or otherwise sufficient to avoid a default judgment despite its numerous failures to comply with the requirements of an answer, Opposer submits that it should be stricken for the following reasons, discussed in more detail above:

² As a technical matter, Applicant’s March 14 Communication also fails to comply with the requirements of 37 C.F.R. §2.126 (1) for paper submissions and fails to comply with the format for Answer set forth in TBMP §311.01(a) with respect to the heading, name of the proceeding, and title description.

- a. Applicant's March 14 Communication does not represent itself to be an answer. There is no provision in the rules for the communication.
- b. Because Applicant's March 14 Communication was not served and did not contain a certificate of service or any other proof of service, Applicant's March 14 Communication *cannot* be considered by the Board. See paragraph 6, above.
- c. Because Applicant's March 14 Communication did not contain the admissions and/or denials required of an answer or meet other requirements for an answer, it cannot be construed to be an answer.

9. As stated in TBMP §311.02(a), "An answer that fails to deny a portion of an allegation may be deemed admitted as to that portion. [citing Fed. R. Civ. P. 8(d)]" Therefore, if the Board, decides to accept the March 14 Communication as an "Answer" or otherwise sufficient to avoid a default judgment despite its numerous failures to comply with the requirements of an answer, Opposer submits that, because the averments of the Notice of Opposition have not been denied, they should be deemed admitted.

10. The deadline for a discovery conference in this matter is set for April 18, 2008, with the discovery period set to open on that date as well. Because this motion may be dispositive of this matter and because Applicant has not yet notified Opposer as to which if any of Converse's averments it is contesting, it is requested that this matter be suspended pending disposition of this motion and all deadlines re-set, if necessary, beginning at a time after an Answer is served.

WHEREFORE, Converse, respectfully requests the Board enter judgment against the Applicant by default for failure to Answer the Notice of Opposition, thereby

sustaining the Opposition and refusing registration to the Applicant or, in the alternative, if the Board deems Applicant's March 14, 2008, communication to be an "Answer" or otherwise sufficient to avoid default judgment, to strike the "Answer," to construe all allegation set forth in the notice of opposition as admitted and to suspend proceedings pending resolution of this motion.

Respectfully submitted,

GALLOP, JOHNSON & NEUMAN, L.C.



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed first-class, postage prepaid on this 9th day of April, 2008 to:

Ilias Pepropoulos
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