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Filing date: **06/09/2008**

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

Proceeding	91183601
Party	Plaintiff No Fear, Inc.
Correspondence Address	Kit M. Stetina Stetina Brunda Garred & Brucker 75 Enterprise Ste 250 Aliso Viejo, CA 92656 UNITED STATES opposition@stetinalaw.com
Submission	Motion for Default Judgment
Filer's Name	Kit M. Stetina
Filer's e-mail	opposition@stetinalaw.com
Signature	/Kit M. Stetina/
Date	06/09/2008
Attachments	Motion.for.Default.Judgment 490M.pdf (17 pages)(369420 bytes)

Case: NOFER-490M

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Application Serial No. 77/119,809

No Fear, Inc.,	)	Opposition No.: 91183601
	)	
Opposer	)	
	)	
vs.	)	
	)	
Alon Oliver Stivi	)	
	)	
Applicant	)	

MOTION FOR ENTRY OF DEFAULT

BOX TTAB, NO FEE
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir/Madam:

Opposer, No Fear, Inc., hereby brings this Motion for Entry of Default Judgment. As a basis for this motion Opposer advises as follows.

- On April 16, 2008, Opposer filed its Notice of Opposition (attached hereto without exhibits as Exhibit A).
- On April 17, 2008, the Trademark Trial and Appeal Board (TTAB) issued its Order instituting the proceedings and setting the dates (attached hereto as Exhibit B).
- Applicant did not timely file an Answer to the Notice of Opposition, or a

Motion for an Extension of Time, on or before the due date of May 27, 2008.

- Because of Applicant's failure to file an Answer to the Notice of Opposition, Opposer maintains that it is appropriate under 37 C.F.R. § 2.106(a) and Fed. R. Civ. P. 55(a) that a Default Judgment be entered by the Board.

WHEREFORE, Opposer respectfully requests that a Default Judgment be entered and that United States Trademark Application Serial No. **77/119,809** be declared abandoned.

As of the filing date of this Motion for Entry of Default Judgment, no Answer has been filed by Applicant. Therefore, in view of the forgoing, an Entry of Default in this matter is proper.

A Proof of Service to Applicant is attached hereto. Should any additional fees be necessary, please charge Deposit Account No. 19-4330.

Respectfully submitted,

STETINA BRUNDA GARRED & BRUCKER

Dated: 6/9/08

By: _____

Kit M. Stetina, Reg. No. 29,445
75 Enterprise, Suite 250
Aliso Viejo, CA 92656
(949) 855-1246
Counsel for Opposer

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PROOF OF SERVICE

State of California)
) ss.
County of Orange)

I am over the age of 18 and not a party to the within action; my business address is 75 Enterprise, Suite 250, Aliso Viejo, California 92656. On **June 9, 2008**, the attached **MOTION FOR ENTRY OF DEFAULT** was served on all interested parties in this action by U.S. Mail, postage prepaid, at the address as follows:

ELISE TENEN-AOKI
GREENBERG TRAURIG, LLP
2450 COLORADO AVE STE 400E
SANTA MONICA, CA 90404-5524

Executed on **June 9, 2008** at Aliso Viejo, California. I declare under penalty of perjury that the above is true and correct. I declare that I am employed in the office of STETINA BRUNDA GARRED & BRUCKER at whose direction service was made.

Laura Szigeti

Laura Szigeti

EXHIBIT A

Case: NOFER-490M

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Application Serial No. 77/119,809

No Fear, Inc.,	)	Opposition No.:
	)	
Opposer	)	
	)	
vs.	)	
	)	
Alon Oliver Stivi	)	
	)	
Applicant	)	

NOTICE OF OPPOSITION

Box TTAB – Fee
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir/Madam:

In the matter of the application of Alon Oliver Stivi of Newport Beach, CA (hereinafter "Applicant") for registration of the mark Fearless American, Application Serial No. 77/119,809 published in the Official Gazette on March 4, 2008 at TM 906, No Fear, Inc., a California corporation, with offices at 1812 Aston Avenue, Carlsbad, California 92008 (hereinafter "Opposer"), believes that it will be damaged by registration of the mark shown in Serial No. 77/119,809, and hereby opposes the same.

The grounds for opposition are as follows:

1. Opposer is and has been for many years engaged in the extensive development, advertising, and marketing of a variety of products and services including shorts, pants, shirts, t-shirts, polo shirts, tank tops, sweatshirts, sweatpants, hats, visors, caps, belts, footwear including shoes, thongs, sandals and tennis shoes, toys and sporting goods products including video game cartridges, model cars, bicycles and structural parts therefor, surfboards, skateboards, surf leashes, jewelry, watches, bracelets, earrings, anklets, fragrance products for men and women, sunglasses, eyeglasses, sports bags, travel bags stickers, printed matter, namely, calendars, posters, newspapers, and magazines featuring sports and recreation subject matter. In connection therewith, Opposer has used, or filed federal applications with an intent to use, in interstate commerce, the marks NO FEAR, FEAR THIS, NO FEAR (PLUS DESIGN), FEAR GOD, FEAR NO FISH, FEARLESS, and FEARLESS FACTORY, (hereinafter collectively referred to as the NO FEAR TRADEMARKS) for the aforementioned goods since long prior to Applicant's filing date of the application of Serial No. 77/119,809 for the mark FEARLESS AMERICAN.

2. Since at least as early as April 1986, Opposer has made use of its NO FEAR TRADEMARKS throughout the United States in interstate commerce. Since adoption of its NO FEAR TRADEMARKS, Opposer has continuously used those marks throughout the United States in interstate commerce.

3. Opposer has expended considerable sums in exerting every effort to maintain the highest standard of quality for its products, and has created valuable goodwill among the purchasing public under its NO FEAR TRADEMARKS.

4. As a result of the continuous and extensive use of the NO FEAR TRADEMARKS by Opposer, those marks have become and continue to function as a valuable business and marketing asset of Opposer, and serve to indicate to the trade and consuming public the products originating from Opposer and its authorized representative.

5. Opposer has obtained United States Trademark Registration No. 1,600,980, registered June 12, 1990, for the mark FEARLESS (stylized) for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit 1**.

6. Opposer has obtained United States Trademark Registration No. 1,737,420, registered December 1, 1992, for the mark NO FEAR for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit 2**.

7. Opposer has obtained United States Trademark Registration No. 1,822,026, registered February 15, 1994, for the mark NO FEAR for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit 3**.

8. Opposer has obtained United States Trademark Registration No. 1,855,031, registered September 20, 1994, for the mark NO FEAR for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit 4**.

9. Opposer has obtained United States Trademark Registration No. 1,891,475, registered April 25, 1995, for the mark NO FEAR for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit 5**.

10. Opposer has obtained United States Trademark Registration No. 1,907,882, registered July 25, 1995, for the mark NO FEAR for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit 6**.

11. Opposer has obtained United States Trademark Registration No. 1,912,489, registered August 15, 1995, for the mark FEAR THIS for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit 7**.

12. Opposer has obtained United States Trademark Registration No. 1,996,125, registered August 20, 1996, for the mark FEARLESS FACTORY for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit 8**.

13. Opposer has obtained United States Trademark Registration No. 2,019,466, registered November 26, 1996, for the mark FEAR GOD for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit 9**.

14. Opposer has obtained United States Trademark Registration No. 2,044,263, registered March 11, 1997, for the mark FEAR THIS for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit 10**.

15. Opposer has obtained United States Trademark Registration No. 2,055,148, registered April 22, 1997, for the mark NO FEAR for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit 11**.

16. Opposer has obtained United States Trademark Registration No. 2,055,158, registered April 22, 1997, for the mark NO FEAR for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit 12**.

17. Opposer has obtained United States Trademark Registration No. 2,093,391, registered September 2, 1997, for the mark NO FEAR for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit 13**.

18. Opposer has obtained United States Trademark Registration No. 2,095,492, registered September 9, 1997, for the mark NO FEAR for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit 14**.

19. Opposer has obtained United States Trademark Registration No. 2,176,874, registered July 28, 1998, for the mark FEARLESS FACTORY for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit 15**.

20. Opposer has obtained United States Trademark Registration No. 2,203,143, registered November 10, 1998, for the mark FEAR GOD for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit 16**.

21. Opposer has obtained United States Trademark Registration No. 2,285,679, registered October 12, 1999, for the mark FEAR NO FISH for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit 17**.

22. Opposer has obtained United States Trademark Registration No. 2,818,464, registered February 24, 2004 for the mark NO FEAR for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit 18**.

23. Opposer has obtained United States Trademark Registration No. 2,995,742, registered September 13, 2005 for the mark NO FEAR for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit 19**.

24. Opposer has obtained United States Trademark Registration No. 3,098,868 registered May 30, 2006 for the mark NO FEAR for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit 20**.

25. Opposer has obtained United States Trademark Registration No. 3,104,724 registered June 13, 2006 for the mark NO FEAR for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit 21**.

26. Opposer has obtained United States Trademark Registration No. 3,140,408 registered September 5, 2006 for the mark NO FEAR for the goods set forth in that registration. A copy of that registration is attached hereto as **Exhibit 22.**

27. Notwithstanding Opposer's rights in and to said NO FEAR TRADEMARKS, on August 27, 2007 Applicant, on information and belief, filed an application for registration of the mark FEARLESS AMERICAN in International Class: 025 for apparel and headwear, namely, shirts, t-shirts, hats, caps, jeans, belts, jackets, pants, scarves and bandanas. Said application was published for opposition in the Official Gazette on March 3, 2008 at TM 906.

28. Pursuant to Trademark Rules of Practice 2.102, Opposer filed a Request to Extend Time for Filing this Notice of Opposition to May 3, 2008. A copy of said Request to Extend Time is attached hereto as **Exhibit 23**.

29. Applicant's FEARLESS AMERICAN mark is confusingly similar to Opposer's NO FEAR TRADEMARKS and its registration and use by Applicant on the goods claimed in the subject application is likely to cause confusion, deception and mistake.

30. Applicant's use of its FEARLESS AMERICAN mark interferes with Opposer's use of its NO FEAR TRADEMARKS and dilutes the strength of Opposer's trademark and use of, or registration of Applicant's mark in by Applicant will seriously damage Opposer.

WHEREFORE, Opposer believes that it will be damaged by said registration and prays that registration of Application Serial No. 77/119/809 to Applicant be denied.

Opposer authorizes the filing fee for this Opposition in the amount of $300 (one international class) to be charged to Opposer's Deposit Account.

Respectfully submitted,

STETINA BRUNDA GARRED & BRUCKER

Dated: 4/16/08

By: _____

Kit M. Stetina, Reg. No. 29,445
75 Enterprise, Suite 250
Aliso Viejo, CA 92656
(949) 855-1246
Counsel for Opposer
No Fear, Inc.

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KMS/vl

PROOF OF SERVICE

State of California)
) ss.
County of Orange)

I am over the age of 18 and not a party to the within action; my business address is 75 Enterprise, Suite 250, Aliso Viejo, California 92656. On **April 16, 2008**, the attached **NOTICE OF OPPOSITION** was served on all interested parties in this action by U.S. Mail, postage prepaid, at the address as follows:

ELISE TENEN-AOKI
GREENBERG TRAURIG, LLP
2450 COLORADO AVE STE 400E
SANTA MONICA, CA 90404-5524

Executed on **April 16, 2008** at Aliso Viejo, California. I declare under penalty of perjury that the above is true and correct. I declare that I am employed in the office of STETINA BRUNDA GARRED & BRUCKER at whose direction service was made.

Victoria Liu

EXHIBIT B

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

Mailed: April 17, 2008

Opposition No 91183601
Serial No. 77119809

ELISE TENEN-AOKI
GREENBERG TRAURIG, LLP
2450 COLORADO AVE STE 400E,
SANTA MONICA, CA 90404-5524 UNITED STATES

No Fear, Inc.

v.

Alon Oliver Stivi

Kit M. Stetina
Stetina Brunda Garred & Brucker
75 Enterprise Ste 250,
Aliso Viejo, CA 92656 UNITED STATES

Lalita R. Greer, Paralegal Specialist:

A notice of opposition to the registration sought by the above-identified application has been filed. A service copy of the notice of opposition was forwarded to applicant (defendant) by the opposer (plaintiff). An electronic version of the notice of opposition is viewable in the electronic file for this proceeding via the Board's TTABVUE system: **http://ttabvue.uspto.gov/ttabvue/**.

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 ("Trademark Rules"). These rules may be viewed at the USPTO's trademarks page: **http://www.uspto.gov/main/trademarks.htm**. The Board's main webpage (**http://www.uspto.gov/web/offices/dcom/ttab/**) includes information on amendments to the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a web link to the Board's manual of procedure (the TBMP).

Plaintiff must notify the Board when service has been ineffective, within 10 days of the date of receipt of a returned service copy or the date on which plaintiff learns that service has been ineffective. Plaintiff has no subsequent duty to investigate the defendant's

whereabouts, but if plaintiff by its own voluntary investigation or through any other means discovers a newer correspondence address for the defendant, then such address must be provided to the Board. Likewise, if by voluntary investigation or other means the plaintiff discovers information indicating that a different party may have an interest in defending the case, such information must be provided to the Board. The Board will then effect service, by publication in the Official Gazette if necessary. *See* Trademark Rule 2.118. In circumstances involving ineffective service or return of defendant's copy of the Board's institution order, the Board may issue an order noting the proper defendant and address to be used for serving that party.

Defendant's ANSWER IS DUE FORTY DAYS after the mailing date of this order. (*See* Patent and Trademark Rule 1.7 for expiration of this or any deadline falling on a Saturday, Sunday or federal holiday.) **Other deadlines the parties must docket or calendar are either set forth below (if you are reading a mailed paper copy of this order) or are included in the electronic copy of this institution order viewable in the Board's TTABVUE system at the following web address: http://ttabvue.uspto.gov/ttabvue/.**

Defendant's answer and any other filing made by any party must include proof of service. *See* Trademark Rule 2.119. **If they agree to, the parties may utilize electronic means, e.g., e-mail or fax, during the proceeding for forwarding of service copies.** *See* Trademark Rule 2.119(b)(6).

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

Time to Answer	5/27/2008
Deadline for Discovery Conference	6/26/2008
Discovery Opens	6/26/2008
Initial Disclosures Due	7/26/2008
Expert Disclosures Due	11/23/2008
Discovery Closes	12/23/2008
Plaintiff's Pretrial Disclosures	2/6/2009
Plaintiff's 30-day Trial Period Ends	3/23/2009
Defendant's Pretrial Disclosures	4/7/2009
Defendant's 30-day Trial Period Ends	5/22/2009
Plaintiff's Rebuttal Disclosures	6/6/2009
Plaintiff's 15-day Rebuttal Period Ends	7/6/2009

As noted in the schedule of dates for this case, the parties are required to have a conference to discuss: (1) the nature of and basis for their respective claims and defenses, (2) the possibility of settling the case or at least narrowing the scope of claims or defenses, and (3) arrangements relating to disclosures, discovery and introduction

of evidence at trial, should the parties not agree to settle the case. *See* Trademark Rule 2.120(a)(2). Discussion of the first two of these three subjects should include a discussion of whether the parties wish to seek mediation, arbitration or some other means for resolving their dispute. Discussion of the third subject should include a discussion of whether the Board's Accelerated Case Resolution (ACR) process may be a more efficient and economical means of trying the involved claims and defenses. Information on the ACR process is available at the Board's main webpage. Finally, if the parties choose to proceed with the disclosure, discovery and trial procedures that govern this case and which are set out in the Trademark Rules and Federal Rules of Civil Procedure, then they must discuss whether to alter or amend any such procedures, and whether to alter or amend the Standard Protective Order (further discussed below). Discussion of alterations or amendments of otherwise prescribed procedures can include discussion of limitations on disclosures or discovery, willingness to enter into stipulations of fact, and willingness to enter into stipulations regarding more efficient options for introducing at trial information or material obtained through disclosures or discovery.

The parties are required to conference in person, by telephone, or by any other means on which they may agree. A Board interlocutory attorney or administrative trademark judge will participate in the conference, upon request of any party, provided that such participation is requested no later than ten (10) days prior to the deadline for the conference. *See* Trademark Rule 2.120(a)(2). The request for Board participation must be made through the Electronic System for Trademark Trials and Appeals (ESTTA) or by telephone call to the interlocutory attorney assigned to the case, whose name can be found by referencing the TTABVUE record for this case at **http://ttabvue.uspto.gov/ttabvue/**. The parties should contact the assigned interlocutory attorney or file a request for Board participation through ESTTA only after the parties have agreed on possible dates and times for their conference. Subsequent participation of a Board attorney or judge in the conference will be by telephone and the parties shall place the call at the agreed date and time, in the absence of other arrangements made with the assigned interlocutory attorney.

The Board's Standard Protective Order is applicable to this case, but the parties may agree to supplement that standard order or substitute a protective agreement of their choosing, subject to approval by the Board. The standard order is available for viewing at: **http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm**. Any party without access to the web may request a hard copy of the standard order from the Board. The standard order does not automatically protect a party's confidential information and its provisions must be utilized as needed by the parties. *See* Trademark Rule 2.116(g).

Information about the discovery phase of the Board proceeding is available in chapter 400 of the TBMP. By virtue of amendments to the Trademark Rules effective November 1, 2007, the initial disclosures and expert disclosures scheduled during the discovery phase are required only in cases commenced on or after that date. The TBMP has not yet been amended to include information on these disclosures and the parties are referred to the August 1, 2007 Notice of Final Rulemaking (72 Fed. Reg. 42242) posted on the Board's webpage. The deadlines for pretrial disclosures included in the trial phase of the schedule for this case

also resulted from the referenced amendments to the Trademark Rules, and also are discussed in the Notice of Final Rulemaking.

The parties must note that the Board allows them to utilize telephone conferences to discuss or resolve a wide range of interlocutory matters that may arise during this case. In addition, the assigned interlocutory attorney has discretion to require the parties to participate in a telephone conference to resolve matters of concern to the Board. *See* TBMP § 502.06(a) (2d ed. rev. 2004).

The TBMP includes information on the introduction of evidence during the trial phase of the case, including by notice of reliance and by taking of testimony from witnesses. *See* TBMP §§ 703 and 704. Any notice of reliance must be filed during the filing party's assigned testimony period, with a copy served on all other parties. Any testimony of a witness must be both noticed and taken during the party's testimony period. A party that has taken testimony must serve on any adverse party a copy of the transcript of such testimony, together with copies of any exhibits introduced during the testimony, within thirty (30) days after the completion of the testimony deposition. *See* Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing after briefing is not required but will be scheduled upon request of any party, as provided by Trademark Rule 2.129.

If the parties to this proceeding are (or during the pendency of this proceeding become) parties in another Board proceeding or a civil action involving related marks or other issues of law or fact which overlap with this case, they shall notify the Board immediately, so that the Board can consider whether consolidation or suspension of proceedings is appropriate.

ESTTA NOTE: For faster handling of all papers the parties need to file with the Board, the Board strongly encourages use of electronic filing through the Electronic System for Trademark Trials and Appeals (ESTTA). Various electronic filing forms, some of which may be used as is, and others which may require attachments, are available at **http://estta.uspto.gov**.