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

Proceeding	91190068
Party	Plaintiff The Sunrider Corporation
Correspondence Address	Elizabeth A. Linford Ladas & Parry LLP 5670 Wilshire Boulevard, Suite 2100 Los Angeles, CA 90036 UNITED STATES elinford@la.ladas.com
Submission	Motion for Default Judgment
Filer's Name	Elizabeth A. Linford
Filer's e-mail	elinford@la.ladas.com
Signature	/elizabeth a linford/
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***IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD***

THE SUNRIDER CORPORATION,

Opposer,

v.

VITALIFE, INC.,

Applicant.

Opposition No. 91190068

Serial Nos. 75/810190, 75/810188,
75/775546 and 75/716686

Published: April 7, 2009

**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 312.01 and 508 and Rule 2.106(a) of the Trademark Rules of Practice, THE SUNRIDER CORPORATION ("Opposer") files this Motion for the Entry of Default Judgment ("Motion") for the failure of VITALIFE, INC. ("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 the Affidavit of Elizabeth A. Linford, attorney for Opposer, stating that on May 6, 2009, a Combined Notice of Opposition opposing the registration of U.S. Trademark Application Serial Nos. 75/810190, 75/810188, 75/775546 and 75/716686 for the marks VITALIFE AROUSAL FOR WOMEN, VITALIFE AROUSAL FOR MEN, VITALIFE ENERGY-BOOST and VITALIFE FOUR (the "Applications"), were filed with the Board on

behalf of Opposer and served on the Applicant through Applicant's attorney of record, Kevin Anderson, Esq. (Linford Affidavit, Para. 2)

On May 6, 2009, the Board issued a schedule of trial dates ("Notice") to both Applicant and Opposer's counsel, advising each party that the Notice of Opposition had been filed and providing the schedule of discovery and testimony dates for the opposition proceeding. Opposer was allowed forty (40) days from the mailing date of such Notice to file a response to the Notice of Opposition. (Linford Affidavit, Para. 3) Opposer's response to the Combined Notice of Opposition was due on or before June 15, 2009.

On May 12, 2009, the service copy of the Combined Notice of Opposition, sent to counsel for Applicant at the address identified in each of the Applications, namely, 208 Horizon Avenue, Suite D, Venice, California 90291, was return by the United States Postal Service as undeliverable. (Linford Affidavit, Para. 4) On May 13, 2009, Counsel for Opposer filed a Notification of Additional Service with the Board, pursuant to 37 C.F.R. §2.101(b), and mailed a copy of the Combined Notice of Opposition to Applicant directly, at the address identified in the Applications. (Linford Affidavit, Para. 5)

On July 17, 2009, the Board issued a notice acknowledging Opposer's Notification of Additional Service and identifying another address for counsel for Applicant at a location in Santa Monica, California. (Linford Affidavit, Para. 6) The Board reissued the trial schedule, allowing Applicant an *additional* forty days to respond to the Combined Notice of Opposition. Applicant's extended deadline for responding to the complaint was identified as August 26, 2009. (Linford Affidavit, Para. 7)

Opposer's Answer or other response to the Notice of Opposition was not filed with the Board or served upon Opposer's counsel at any time prior to the preparation and filing of this Motion. (Linford Affidavit, Para. 8)

Under TMEP Section 312.01 and Rule 2.106(a) of the Trademark Rules of Practice, if a respondent 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 respondent 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 issued a Notice of Default. Furthermore, under TBMP Sections 317.01 and 508, if the Board has not issued a notice of default, the party acting in the position of 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 Opposer's Answer or other response to the Combined Notice of Opposition was not timely filed within the forty (40) day period ending August 26, 2009, Opposer moves for default judgment in this matter.

Opposer believes that Applicant has been provided with ample notice of the Combined Notice of Opposition. In total, Applicant has been allowed more than 113 days to file its response, from the date the original trial schedule was issued by the Board on May 6, 2009. Because both Applicant and Applicant's counsel have each been served with the Combined Notice of Opposition, and Applicant has failed to respond within the time allowed by the Board, Opposer respectfully requests that the Board grant this Motion and that the Applications be denied registration as requested in the Combined Notice of Opposition.

Respectfully submitted,

THE SUNRIDER CORPORATION



By:

Elizabeth A. Linford
Attorney for Opposer
LADAS & PARRY LLP
5670 Wilshire Boulevard, Suite 2100
Los Angeles, CA 90036
Tel.: 323-934-2300
Fax: 323-934-0202

Dated: September 4, 2009

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

THE SUNRIDER CORPORATION,

Opposer,

v.

VITALIFE, INC.,

Applicant.

Opposition No. 91190068

Serial Nos. 75/810190, 75/810188,
75/775546 and 75/716686

Published: April 7, 2009

AFFIDAVIT OF ELIZABETH A. LINFORD
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

I, Elizabeth A. Linford, being duly sworn, deposes and says:

1. I am an attorney with the law firm of Ladas & Parry LLP located at 5670 Wilshire Boulevard, Suite 2100, Los Angeles, California 90036-5679, attorneys for Opposer, The Sunrider Corporation ("Opposer").

2. I am the attorney who prepared and filed the Combined Notice of Opposition with the Trademark Trial and Appeal Board (the "Board") on May 6, 2009 in connection with U.S. Trademark Application Serial Nos. 75/810190, 75/810188, 75/775546 and 75/716686 for the marks VITALIFE AROUSAL FOR WOMEN, VITALIFE AROUSAL FOR MEN, VITALIFE ENERGY-BOOST and VITALIFE FOUR (the "Applications"). The Combined Notice of Opposition was served on counsel for Applicant at the address identified therefor in the online records of the United States Patent and Trademark Office, at 208 Horizon Avenue, Suite D, Venice, California 90291.

3. I received notice of the trial schedule (“Notice”) from the Board confirming that Opposer’s Combined Notice of Opposition had been filed. The Board mailed the Notice to Applicant and counsel for Opposer on May 6, 2009, informing Applicant that it had forty (40) days to respond to the Combined Notice of Opposition, or until June 15, 2009.

4. On May 12, 2009, the service copy of the Combined Notice of Opposition, sent to counsel for Applicant at the address identified in each of the Applications, noted in Paragraph 2 of this Affidavit, was returned as undeliverable by the United States Postal Service.

5. On May 13, 2009, I prepared and filed a Notification of Additional Service with the Board and served a copy of the Combined Notice of Opposition on Applicant directly, at the address identified in the Applications, namely, 2456 West 208th Street, Suite 101, Torrance, California 90501.

6. On July 17, 2009, the Board issued a notice identifying an alternative address for counsel for Applicant, namely, 1427 25th Street, Santa Monica, California 90404, and indicating that the Board would send a copy of the Combined Notice of Opposition to such counsel.

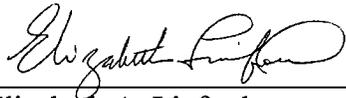
7. The Board reissued the trial schedule, allowing Applicant an additional forty days to respond to the Combined Notice of Opposition. Applicant’s deadline for responding to the complaint was identified as August 26, 2009.

8. Opposer, however, Applicant did not file a response to the Notice of Opposition with the Board or serve the same upon Opposition at any time prior to the preparation and filing of Opposer’s Motion for Entry of Default Judgment.

9. Opposer’s answer or other response to the Combined Notice of Opposition was not timely filed.

Dated: September 4, 2009

By:



Elizabeth A. Linford

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this correspondence is being filed electronically with the TTAB on the date identified below.

Elizabeth A. Linford

(Name)



(Signature)

September 4, 2009

(Date)

CERTIFICATE OF SERVICE

I hereby certify that a true and complete 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 has been served on Applicant's attorney or record on this 4th day of September 2009, via First Class Mail, postage prepaid to:

Kevin Anderson, Esq.
Law Offices of Kevin Anderson
1427 25th Street
Santa Monica, CA 90404

Date: September 4, 2009



Elizabeth A. Linford