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

Proceeding	91190169
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of App. Ser. No. 77/355,544	)	
	)	
Susino Umbrella Co., Ltd.,	)	
	)	
Opposer,	)	Opposition No. 91190169
	)	
v.	)	
	)	
Susino USA, LLC	)	
	)	
Applicant.	)	

**OPPOSER’S MOTION TO WITHDRAW ADMISSIONS**

Pursuant to TBMP § 525 and Fed. R. Civ. P. 36(b) (“Rule 36(b)”), Opposer Susino Umbrella Co., Ltd. (hereinafter “Opposer”) moves the Trademark Trial and Appeal Board (“Board”) for an order to withdraw the default responses to the Request for Admissions propounded by Applicant Susino USA, LLC (hereinafter “Applicant”) in the captioned proceeding. This Motion to Withdraw is being filed concurrently and in conjunction with Opposer’s Response in Opposition to Applicant’s Motion for Summary Judgment (“Response to Summary Judgment Motion”).

In support of this Motion to Withdraw, Opposer incorporates Opposer’s Motion for Relief from Judgment filed August 20, 2010 (“Motion for Relief”) and its Reply to Applicant’s Response to Opposer’s Motion for Relief from Judgment filed October 12, 2010 (“Reply to Response to Motion for Relief”), and states as grounds for this Motion to Withdraw:

1. Opposer is the senior user and rightful owner of the SUSINO mark. It has exported hundreds of millions of umbrellas worldwide since 1995; it formally adopted the name Susino in 2005; it owns three international registrations for the SUSINO mark dating

back to 2004; it has used the SUSINO mark in the United States since 2007; and it has been selling SUSINO-branded umbrellas to customers in the U.S. since 2008.

2. Applicant, as Todd Nadrich and Stephanie Shyu, solicited customers in the U.S. to purchase Opposer's umbrellas. At no time has Applicant manufactured, sold, or otherwise offered SUSINO-branded umbrellas in the U.S. on its own behalf. At no time did Opposer agree to assign, license or otherwise transfer any rights to Applicant, Nadrich or Shyu for the SUSINO name.
3. On December 19, 2007, Applicant wrongfully filed an application with the PTO to register the SUSINO mark. In support of its Application, Applicant submitted as its specimen of use a copy of a page from Opposer's brochure displaying the SUSINO mark. That specimen was not from any umbrella or other good provided offered for sale by Applicant, and was used by Applicant without Opposer's knowledge or authorization.
4. Opposer opposed the Application on May 13, 2009.
5. On January 11, 2010, Applicant purportedly served a Request for Admissions on Opposer. Having received no response to the Request, Applicant immediately filed a Motion for Summary Judgment on March 12, 2010.
6. On June 8, 2010, the Board granted the Motion for Summary Judgment Motion "as conceded" based on its finding that the Request for Admissions was properly served and thus would "stand admitted by operation of applicable rules."
7. On August 20, 2010, Opposer filed its Motion for Relief pursuant to Fed. R. Civ. P. 60(b)(4), seeking relief from the Board's order granting the Motion for Summary Judgment. The Board granted the Motion for Relief, vacated its summary judgment

order, and granted Opposer thirty days to respond to the Motion for Summary Judgment.

8. Although the failure to timely respond to requests for admissions results in automatic admission of the matters requested, Fed. R. Civ. P 36(b) provides relief under certain circumstances. The rule provides that admissions deemed admitted by default may be withdrawn or amended if (1) withdrawal will aid in presenting the merits of the case; and (2) no substantial prejudice to the party who requested the admission will result from allowing the admission to be withdrawn or amended. Rule 36(b) emphasizes the importance of having the action resolved on the merits.
9. If the Board were to deny the Motion to Withdraw, the Board would eliminate the presentation of the merits of this case because the record would be devoid of the information that is most pertinent and relevant to the issues in this case, including, in particular, which party has priority in the use and ownership of the SUSINO mark. On the other hand, by permitting withdrawal of the default admissions, the Board would permit presentation of the merits of the case by allowing Opposer to introduce evidence that conclusively establishes the existence of genuine issues of material fact, including evidence to rebut Applicant's claim that it has priority in the SUSINO mark.
10. Applicant cannot satisfy its burden and demonstrate that it will be prejudiced by withdrawal of the default admissions. There is no prejudice where withdrawal requires a party to defend its case on the merits, or where it may impact the preparation of summary judgment or discovery, especially since there will still be time for discovery upon withdrawal of the admissions. Moreover, Applicant may not be permitted to rely

on the unreasonable belief that Opposer intentionally admitted facts that would have the practical effect of conceding the key elements of Opposer's case.

11. Withdrawal of the default admissions is further warranted "in the interests of justice" because such admissions are directly contradicted by evidence of actual facts. There is substantial evidence that directly rebuts the "admitted" facts that purport to establish Applicant's priority in the SUSINO mark. The "actual facts" demonstrate, among other things, that Opposer is the senior user and rightful owner of the SUSINO mark, has common law rights in the mark, and has priority over Applicant in the SUSINO mark because Applicant's purported use of the mark is actually Opposer's use of its own mark.

Accordingly, for the reasons set forth above and in the accompanying brief, the Board should grant this Motion to Withdraw Admissions, and in doing so, deny Applicant's Motion for Summary Judgment.

Respectfully submitted,

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April 18, 2010

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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In the Matter of App. Ser. No. 77/355,544 )  
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Opposer, ) Opposition No. 91190169  
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Susino USA, LLC )  
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Applicant. )

**BRIEF IN SUPPORT OF OPPOSER'S  
MOTION TO WITHDRAW ADMISSIONS**

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April 18, 2011

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**BRIEF IN SUPPORT OF OPPOSER’S  
MOTION TO WITHDRAW ADMISSIONS**

Pursuant to TBMP § 525 and Fed. R. Civ. P. 36(b) (“Rule 36(b)”), Opposer Susino Umbrella Co., Ltd. (hereinafter “Opposer”) hereby submits its brief in support of its Motion to Withdraw the default responses to the Request for Admissions propounded by Applicant Susino USA, LLC (“Applicant”) in the captioned proceeding, filed concurrently and in conjunction with its Response in Opposition to Applicant’s Motion for Summary Judgment (“Response to Summary Judgment Motion”).

**I. INTRODUCTION AND SUMMARY OF ARGUMENT**

While the procedural history of this case may seem complex, the facts are simple: Applicant has misappropriated the SUSINO name in order to, among other things, extort approximately one million dollars from Opposer, the senior user and rightful owner of the SUSINO mark. Opposer has exported hundreds of millions of umbrellas worldwide since 1995; it formally adopted the name Susino in 2005; it owns three international registrations for the SUSINO mark dating back to 2004; it has used the SUSINO mark in the United States since 2007; and it has been selling SUSINO-branded umbrellas to customers in the U.S. since 2008.

Applicant, on the other hand, merely solicited customers in the U.S. to purchase Opposer's umbrellas. At no time has Applicant manufactured, sold, or otherwise offered SUSINO-branded umbrellas for sale in the U.S. on its own behalf. At no time did Opposer agree to assign, license or otherwise transfer any rights to Applicant for the SUSINO name. Opposer has priority over Applicant in the SUSINO mark because Applicant has never sold or otherwise used the SUSINO mark for its own goods.

Applicant's Motion for Summary Judgment is based *solely* on the Board's determination that Applicant's Request for Admissions have been deemed admitted by default, including, in particular, the admission that Applicant has priority over Opposer in the SUSINO mark. Accordingly, Opposer hereby moves the Board to withdraw the default admissions on the grounds that (1) withdrawal will aid in presenting the merits of this case and no substantial prejudice will be imposed on Applicant in allowing the default admissions to be withdrawn, and (2) the substantial evidence in this case directly contradicts the facts deemed admitted by default, such that grant of Applicant's Summary Judgment Motion would contravene the purpose and intent of Fed. R. Civ. P 36(b). In the interests of justice, and pursuant to both Board and federal court precedent, the Board should withdraw the admissions and proceed to resolve this matter, not by default, but on its merits.

## **II. BACKGROUND**

Opposer incorporates the factual and procedural background as presented in its accompanying Response to Summary Judgment Motion, as well as in Opposer's Motion for Relief from Judgment ("Motion for Relief"), and in Opposer's Reply to Applicant's Response to Motion for Relief ("Reply to Applicant's Response to Motion for Relief"), filed in this proceeding. Of particular relevance to this Motion to Withdraw are the following facts:

1. Opposer has manufactured and exported nearly 500 million umbrellas from its Chinese factory to more than 100 countries throughout the world since 1995, and has operated under its current name, Susino Umbrella Co., Ltd, since late 2005. (Response to Summary Judgment Motion, Exh. E (Declaration of Anbang Wang (“Wang Decl.”) ¶¶ 7-8) (originally filed with Motion for Relief and attached to Response to Summary Judgment Motion for convenience); Response to Summary Judgment Motion, Exh. B (screenshots of Opposer’s website depicting use of SUSINO mark); Opposer’s Corrected Response to Applicant’s Motion to Dismiss Notice of Opposition (Sept. 15, 2009), Exh. 1 (certificate of name change issued by Fujian Administration for Industry and Commerce).) Opposer has been listed on the Shenzhen Stock Exchange as “Susino Umbrella Co., Ltd.” since 2007, and currently owns three international registrations for the SUSINO mark dating back to March 2004. (Response to Summary Judgment Motion, Exh. C (excerpts from Opposer’s annual report) (attached hereto, full version available at <http://www.susino.com/en/tzgx.asp?classid=19>) and Exh. E (Wang Decl. ¶¶ 8, 10).)
2. In August 2007, Opposer used the SUSINO mark in the United States at a trade show in Las Vegas, and has shipped more than 10,000 crates of SUSINO-branded umbrellas to U.S. customers since October 2008. (Response to Summary Judgment Motion, Exh. E (Wang Decl. ¶¶ 17-18 and Declaration of Jianzhang “Jorzon” Wang (“Jorzon Decl.”) ¶¶ 15-17 (originally filed with Reply to Applicant’s Response to the Motion for Relief and attached to Response to Summary Judgment Motion for convenience)); Response to Summary Judgment Motion, Second Declaration of Jianzhang “Jorzon” Wang (“Second Jorzon Decl.”) ¶¶ 8-10.)
3. At all times relevant to this proceeding, Applicant, as Todd Nadrich and Stephanie Shyu, only solicited customers for Opposer in the United States to purchase umbrellas

manufactured by Opposer. (Motion for Relief, Exh. 6; Response to Summary Judgment Motion, Exh. E (Wang Decl. ¶¶ 11-13 and Jorzon Decl. ¶¶ 8-10).) Opposer's customers would pay Nadrich and Shyu directly. Nadrich and Shyu would remit those payments to Opposer, after retaining a percentage of the payments as compensation for its efforts.

(Response to Summary Judgment Motion, Second Jorzon Decl. ¶ 7.)

4. On December 19, 2007, Applicant wrongfully filed an application with the PTO to register the SUSINO mark. (Serial No. 77/355,544, hereinafter "Application"). In support of its Application, Applicant submitted as its specimen of use a copy of a page from Opposer's brochure displaying the SUSINO mark. That specimen was not from any umbrella or other good provided or sold by Applicant, and was used by Applicant without Opposer's knowledge or authorization. (Motion for Relief, Exh. 14 (copy of specimen of use from Application); Response to Summary Judgment Motion, Exh. E (Wang Decl. ¶ 24).)
5. Opposer opposed the Application on May 13, 2009.
6. On January 11, 2010, Applicant purportedly served a Request for Admissions on Opposer. Having received no response to the Request, Applicant immediately filed a Motion for Summary Judgment on March 12, 2010 ("Summary Judgment Motion"). The Summary Judgment Motion asserted that "[b]ecause of Opposer's failure to respond in a timely manner, the admissions are deemed admitted and conclusively established," (Summary Judgment Motion at 4-5), and concluded that "[i]n view of Opposer [sic] admission that they do not have priority rights over Applicant's application in the mark SUSINO, Applicant is entitled to summary judgment as a matter of law." (Summary Judgment Motion at 6.)
7. On June 8, 2010, the Board granted the Summary Judgment Motion "as conceded." ("Summary Judgment Order").

8. On August 20, 2010, Opposer filed its Motion for Relief pursuant to Fed. R. Civ. P. 60(b)(4), seeking relief from the Board's Summary Judgment Order. As explained in Opposer's Motion for Relief, Opposer did not respond to Applicant's Request for Admissions because it never received that document.
9. The Board granted the Motion for Relief in favor of Opposer, but in doing so, and notwithstanding Opposer's sworn declarations and other evidence to the contrary, it found that Applicant had effectively served Opposer with the Request for Admissions, and thus, the Request for Admissions would "stand admitted by operation of applicable rules." (Order Granting Relief From Judgment at 13.)
10. Accordingly, the Board vacated its Summary Judgment Order in favor of Applicant, and granted Opposer thirty days to respond to the Summary Judgment Motion.

### **III. LEGAL STANDARD**

The failure to timely respond to requests for admissions results in automatic admission of the matters requested. Fed. R. Civ. P. 36(a)(3), TBMP § 407.04. Such failure "can effectively deprive a party of the opportunity to contest the merits of the case." *In re Carney*, 258 F.3d 415, 421 (5th Cir. 2001).

In light of such harsh results, the Board has recognized that Rule 36(b) may be invoked to provide relief. *See Hobie Designs Inc. v. Fred Hayman Beverly Hills Inc.*, 41 USPQ2d 2064, 2065 (TTAB 1990) ("[W]here the failure to timely respond to a request for admissions has a harsh result, Rule 36(b) provides a method for obtaining relief."). This applies both to express admissions and those resulting from a failure to respond, as is the case here. *See Fed. R. Civ. P. 36(b); 999 v. C.I.T. Corp.*, 776 F.2d 866, 869 (9th Cir. 1985). A formal motion to amend or

withdraw is required in such situations. TBMP § 407.03(a); *Kalis v. Colgate-Palmolive Co.*, 231 F.3d 1049, 1059 (7th Cir. 2000).

A party may be permitted to withdraw or amend an admission if the Board finds: (1) withdrawal will aid in presenting the merits of the case; and (2) no substantial prejudice to the party who requested the admission will result from allowing the admission to be withdrawn or amended. Fed. R. Civ. P. 36(b). *See also Hobie Designs*, at 2065 (“[Rule 36(b)] provides that the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtains the admissions fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits.”); *BankAmerica Corp. v. Int’l Travelers Cheque Co.*, 205 USPQ 1233, 1235 (TTAB 1979); *Conlon v. United States*, 474 F.3d 616, 625 (9th Cir. 2007); *Gutting v. Falstaff Brewing Corp.*, 710 F.2d 1309, 1313 (8th Cir. 1983).

In order to succeed on a motion to withdraw admissions, the moving party need not provide an explanation or excuse for the failure to serve timely responses. Rather, the Board’s discretion in ruling on the motion should be exercised “in terms of the effect upon the litigation and prejudice to the resisting party.” *Mid Valley Bank v. North Valley Bank*, 764 F. Supp. 1377, 1391 (E.D. Cal. 1991).

#### IV. ARGUMENT

As was explained in Opposer’s Motion for Relief, Applicant’s Request for Admissions was not properly served on Opposer and was never received by Opposer. In vacating the Summary Judgment Order, the Board nevertheless found that the Request for Admissions had been received by Opposer and therefore treated the requests as “admitted by operation of applicable rules.” If the Board continues to find that Opposer was properly served with Applicant’s Request for Admissions, and that such requests continue to “stand admitted,” the

Board should nevertheless withdraw the resulting default admissions consistent with the purpose and intent of Rule 36(b), which is to allow relief in order to consider the merits of the case and in the interests of justice. *See Hobie Designs*, 41 USPQ2d at 2065 (“Rule 36(b) emphasizes the importance of having the action resolved on the merits....”). The Board has consistently indicated its preference to resolve matters on their merits, and not by default. *See, e.g., Order Granting Relief from Judgment* at 11 (“Default judgments do not address the merits of the case and are therefore ‘not favored by the law.’”); *cf. TBMP § 544* (“[D]efault judgments for failure to timely answer the complaint are not favored by the law....”). Consistent with these principles, the Board should withdraw the default admissions and allow the merits of this case to be presented to the Board.

**A. Withdrawal Of The Default Admissions Will Aid In Presenting The Merits Of This Opposition**

With respect to the first prong of the test to withdraw admissions under Rule 36(b), courts have observed that granting a motion to withdraw admissions is satisfied when “upholding the admissions would practically eliminate any presentation of the merits of the case.” *Conlon*, 474 F.3d at 622 (*citing Hadley v. United States*, 45 F.3d 1345, 1348 (9th Cir. 1995)); *see also Beatty v. U.S.*, 983 F.2d 908, 909 (8th Cir. 1993) (“[D]eemed admissions are to give way to the quest for the truth only in extreme circumstances.”).

If the Board were to deny this Motion to Withdraw (and reject Opposer’s other arguments to deny the Summary Judgment Motion), the Board would eliminate the presentation of the merits of this case because the record will be devoid of the information that is most pertinent and relevant to the issues in this case, including, in particular, which party has priority in the use and ownership of the SUSINO mark. As Applicant itself asserts in its Summary Judgment Motion, the default admissions operate to establish a number of material facts, including an admission

that “Applicant has priority rights to the sole mark SUSINO.” (Summary Judgment Motion at 5.) Such facts, if deemed “admitted,” could not be overcome and the Summary Judgment Motion would effectively prevail by default.

By permitting withdrawal of the default admissions, the Board would permit presentation of the merits of the case by allowing Opposer to introduce evidence that conclusively establishes the existence of genuine issues of material fact, including evidence to rebut Applicant’s claim that it has priority in the SUSINO mark. As explained below, and in more detail in Opposer’s Response to Summary Judgment Motion, there is substantial evidence that directly rebuts Applicant’s claims.

Along with its Response to Summary Judgment Motion filed simultaneously herewith, Opposer is providing the Board with its responses to the Request for Admissions that it would have provided had it actually had an opportunity to respond to the Request for Admissions. (Response to Summary Judgment Motion, Exh. A.) These responses unquestionably demonstrate the existence of genuine issues of material fact, which should be presented to the Board for consideration of the case “on its merits.” *Hobie Designs*, 41 USQP2d at 2065.

Thus, the first prong of the Rule 36(b) test is met because withdrawal of the default admissions would clearly promote presentation of the merits in this proceeding.

**B. No Substantial Prejudice Will Result To Applicant From Allowing The Admissions To Be Withdrawn**

Where a party has sought to withdraw admissions pursuant to Rule 36(b), the burden is on the nonmoving party to show prejudice. *See Sonoda v. Cabrera*, 255 F.3d 1035 (9th Cir. 2001). Applicant cannot satisfy this burden and demonstrate that it will be prejudiced by withdrawal of the default admissions, aside from being deprived of a premature and ill-gained triumph in this proceeding. However, having to defend a case on the merits is not the type of

prejudice that satisfies Rule 36(b). The prejudice contemplated by Rule 36(b) “does not simply mean that the party who obtained the admissions will now have to argue the merits ... [r]ather, the prejudice must be based on the party’s detrimental reliance on such admissions.” *Craft v. Flagg*, 2009 WL 762461, at \*2 (N.D. Ill. Mar. 20, 2009) (citation and quotation marks omitted). Applicant will be unable to demonstrate any detrimental reliance on the default admissions simply based on the fact that it must defend its Application on the merits.

Similarly, Applicant cannot establish prejudice due to its reliance on admissions being deemed admitted by default in the preparation of its Summary Judgment Motion. *See Conlon*, 474 F.3d at 623-34. Courts have been reluctant to find that reliance on default admissions in preparing a motion for summary judgment, without more, constitutes sufficient prejudice to uphold deemed admissions. *See Conlon*, 474 F.3d at 624; *Hadley*, 45 F.3d at 1349.

Additionally, Applicant cannot satisfy its burden by arguing that it ceased conducting discovery in reliance on the default admissions. Such argument also fails to constitute prejudice for purposes of Rule 36(b). *See Conlon*, 474 F.3d at 624 (“Although [defendant] relied on the deemed admissions in choosing not to engage in any other discovery, ... we are reluctant to conclude that a lack of discovery, without more, constitutes prejudice.”). Moreover, when the Board first suspended this proceeding to consider the Summary Judgment Motion, two months remained before the close of the discovery period. (Order Granting Relief From Judgment at 2). If the Summary Judgment Motion is denied, the proceeding will recommence and both parties will have sufficient time to conduct discovery before the discovery period ends.<sup>1</sup>

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<sup>1</sup> In addition, Opposer has requested in its Response to Summary Judgment Motion that the Board extend the discovery period (Response to Summary Judgment Motion at 18-19). If this request is granted, Applicant would have even more time to conduct discovery when the proceeding recommences.

Applicant also cannot claim prejudice based on an unreasonable belief that by not responding, Opposer purposely admitted facts that would have the practical effect of conceding the key elements of Opposer's case. Courts have ruled that such reliance is both unreasonable and insufficient to establish prejudice under the Rule 36(b) analysis. *See Human Resource Dev. Press, Inc. v. IKON Office Solutions Inc.*, 246 F.R.D. 82, 86 (D. Mass. 2007) (granting motion to withdraw default admissions where, "although [defendant] might well have sought withdrawal sooner, [plaintiff] can hardly be surprised by [defendant's] request"); *Westmoreland v. Triumph Motorcycle Corp.*, 71 F.R.D. 192 (D.C. Conn. 1976) ("And if he did rely on that assumption, this court is loathe to reward what would have been an unreasonable reliance in order to glorify technical compliance with the rules of civil procedure.").

In light of the foregoing, the second prong of the Rule 36(b) test is met because Applicant cannot demonstrate prejudice following withdrawal of the default admissions.

**C. The "Actual" Evidence In This Case Directly Contradicts The Facts Deemed Admitted By Default**

Withdrawal of the default admissions is further warranted "in the interests of justice" because such admissions are directly contradicted by evidence of actual facts. *See Federal Deposit Ins. Corp. v. Prusia*, 18 F.3d 637 (8th Cir. 1994) ("Permitting the amendment of responses to a request for admissions is in the interests of justice if the record demonstrates that the 'admitted' facts are contrary to the actual facts."). This observation is consistent with the purpose of Rule 36, which is intended "to expedite trial by eliminating the necessity of proving undisputed and peripheral issues," *Kosta v. Connolly*, 709 F. Supp. 592, 594 (E.D. Pa. 1989), but should not be used "to establish facts which are obviously in dispute or to answer questions of law." *Id.* at 592.

As more fully set forth in the Response to Summary Judgment Motion (and thus incorporated herein by reference),<sup>2</sup> Applicant presents three self-styled “uncontroverted facts” in support of its Summary Judgment Motion. (Summary Judgment Motion at 3-4). Opposer does not dispute that Applicant filed an Application for the SUSINO mark. However, Opposer vigorously disputes Applicant’s conclusion that “[i]n view of Opposer [sic] admission that they do not have priority rights over Applicant’s application in the mark SUSINO, Applicant is entitled to summary judgment as a matter of law.” (Summary Judgment Motion at 6.)

To the contrary, and as further explained in its Response to Summary Judgment Motion, there is substantial evidence that directly rebuts the “admitted” facts that purport to establish Applicant’s priority in the SUSINO mark. The “actual facts” demonstrate, among other things, that Opposer is the senior user and rightful owner of the SUSINO mark, has common law rights in the mark, and has priority over Applicant in the SUSINO mark because Applicant’s purported use of the mark is actually Opposer’s use of its own mark. (*See* Response to Summary Judgment Motion at 14-17.)

In light of such evidence, and in the interests of justice, the Board must permit withdrawal of the default admissions consistent with the purpose and intent of Rule 36(b) to resolve this Opposition proceeding “on its merits.”

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<sup>2</sup> In *BankAmerica Corp. v. Int’l Travelers Cheque Co.*, 205 USPQ 1233, 1235 (TTAB 1979), the Board denied a motion to withdraw admissions, but nevertheless found that, “in the interests of justice,” Rule 36(b) provides for withdrawal “where [the movant] has offered some evidence which has the effect of rebutting the facts admitted in response to [] requests for admissions.” Thus, it appears that the Board treats a motion to withdraw admissions pursuant to Rule 36(b) separately from a request to withdraw pursuant to Rule 36(b) in light of evidence contradicting the default admissions. On the other hand, some courts appear to permit withdrawal due to evidence contrary to “admitted” facts as part of a motion to withdraw under Rule 36(b). *See, e.g., Federal Deposit Ins. Corp. v. Prusia*, 18 F.3d 637, cited *supra*. Thus, out of an abundance of caution, Opposer has raised the argument in both its Response to Summary Judgment Motion (at 14-17) and the instant Motion to Withdraw in order to preserve its right to request or move for withdrawal of the default admissions.

## V. CONCLUSION

WHEREFORE, to effectuate presentation of the case on its merits, and in view of the lack of prejudice to Applicant, Opposer respectfully requests that the Board grant this Motion to Withdraw Admissions. The interests of justice also require the Board to grant this Motion to Withdraw Admissions because the facts deemed admitted by default are directly contradicted by the actual evidence in this case.

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ATTORNEYS FOR  
SUSINO UMBRELLA CO., LTD.

April 18, 2011

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**CERTIFICATE OF SERVICE**

I hereby certify that a complete and true copy of the foregoing **OPPOSER'S MOTION TO WITHDRAW ADMISSIONS** and **BRIEF IN SUPPORT OF OPPOSER'S MOTION TO WITHDRAW ADMISSIONS**, was sent via email and first-class mail on April 18, 2011 to the following:

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