

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

RK/vw

Mailed: February 22, 2011

Opposition No. 91195205

Apple, Inc.

v.

thinkorswim Holdings Inc.

Yong Oh (Richard) Kim, Interlocutory Attorney:

On December 10, 2010, the Board entered a notice of default against applicant for its failure to file an answer or a motion to further extend its time to answer.

On December 13, 2010, applicant resubmitted its prior-filed amendments but this time with the consent of opposer and further requesting "that the default order be lifted as the parties have resolved this matter and Opposer will be filing, as soon as these amendments are accepted, the request for Withdrawal of the Opposition."

Motion to Set Aside Notice of Default

Whether default judgment should be entered against a party is determined in accordance with Fed. R. Civ. P. 55(c), which allows an entry of default to be set aside for

good cause. Insofar as applicant's failure to timely answer the notice of opposition was due to the fact that the parties were successful in reaching an agreement, the December 10, 2010 notice of default is **SET ASIDE**.

Amendment

By the proposed amendment, applicant seeks to change the identification of goods and services (in International Classes 36 and 38) for Serial No. 77380708 by adding the following limitation to each description, i.e., "*none of the aforesaid goods/services relating to portable media players*":

From: "*Securities account trading services for others made available online via a web-based software platform*" in International Class 36; and

"Provision of access to electronic sites, namely, to a securities account trading services site made available online via a web-based software platform" in International Class 38.

To: "*Securities account trading services for others made available online via a web-based software platform; none of the aforesaid goods/services relating to portable media players*" in International Class 36; and

"Provision of access to electronic sites, namely, to a securities account trading services site made available online via a web-based software platform; none of the aforesaid goods/services relating to portable media players" in International Class 38.

Inasmuch as the amendments are clearly limiting in

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nature as required by Trademark Rule 2.71(a), and because opposer consents thereto, the amendments are **APPROVED** and entered. See Trademark Rule 2.133(a).

If this resolves the dispute herein, opposer is allowed until **THIRTY DAYS** from the mailing date of this order to file a withdrawal of the opposition, failing which the opposition will go forward on the application as amended. See Trademark Rule 2.106(c).

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