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

Proceeding	91195312
Party	Plaintiff BRAVO   BRIO RESTAURANT GROUP
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Submission	Motion for Default Judgment
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Signature	/Carrie L. Kiedrowski/
Date	08/10/2010
Attachments	Motion for Default Judgment and Memorandum in Support - POLLO BRAVO Mark and Exhibit A 8-10-10.pdf ( 11 pages )(330935 bytes )

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

In the matter of Trademark Application No. 77/900,343  
For the mark **POLLO BRAVO**  
Date filed: December 23, 2009  
Published in the Official Gazette on May 25, 2010

BRAVO | BRIO RESTAURANT GROUP      Opposition No. 91195312  
Suite 100  
777 Goodale Boulevard  
Columbus, Ohio 43212

Opposer,

v.

POLLO BRAVO LLC  
2115 S. Garnett Rd., SUITE A & B  
Tulsa, Oklahoma 74129

Applicant.

**MOTION FOR DEFAULT JUDGMENT**

Pursuant to Trademark Rules of Practice Trademark Rule 2.106(a) and Federal Rule of Civil Procedure 55(b), the Opposer, BRAVO | BRIO RESTAURANT GROUP (“Bravo” or “Opposer”), hereby moves for an order entering default judgment against Applicant, Pollo Bravo, LLC (“Applicant”), and sustaining the above-referenced opposition in its favor. Bravo is entitled to the entry of an order of default because the Applicant has failed to answer or otherwise respond to the Notice of Opposition filed by Bravo within the time prescribed by the Board’s Order of June 16, 2010.

The grounds for this Motion are more fully set forth in the Memorandum submitted contemporaneously herewith.

WHEREFORE, Bravo prays for an order seeking an entry of default judgment against Applicant and sustaining Opposition No. 91195312 in its favor.

Dated this 10<sup>th</sup> day of August, 2010.

Respectfully submitted,

By: /Carrie L. Kiedrowski/  
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Attorneys for Opposer  
BRAVO | BRIO RESTAURANT GROUP

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document entitled MOTION FOR DEFAULT JUDGMENT was served on this 10<sup>th</sup> day of August, 2010 via U.S. Mail upon:

Tony Doll  
2010 Roosevelt Ave. Ste. 6  
Joplin, Missouri 64804-0266

/Carrie L. Kiedrowski/  
Attorney for Opposer

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In the matter of Trademark Application No. 77/900,343  
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2115 S. Garnett Rd., SUITE A & B  
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Applicant.

**MEMORANDUM IN SUPPORT OF OPPOSER'S  
MOTION FOR DEFAULT JUDGMENT**

**I.      INTRODUCTION**

On June 16, 2010, Bravo filed a Notice of Opposition seeking to prevent registration of Application Serial No. 77/900,343. To date, Applicant has not answered nor otherwise responded. Accordingly, Bravo is entitled to an order sustaining the above-referenced opposition in its favor by reason of default.

**II.     STATEMENT OF FACTS**

Application Serial No. 77/900,343 (the "Application") was published in the Official Gazette on May 25, 2010. On June 16, 2010, Bravo filed a Notice of Opposition ("Opposition"). On June 16, 2010, the Trademark Trial and Appeal Board issued a Scheduling Order for the Opposition (a true and correct copy of which is attached hereto as Exhibit A and by this reference incorporated herein).

Applicant was given forty (40) days to file an Answer. Applicant has never requested an extension of

time to answer or otherwise respond. As of the date of this Motion, well after the July 26, 2010 filing date set by the Board, Applicant has failed to file an Answer.

### **III. ARGUMENT**

Trademark Rule 2.106(a) provides that “[i]f no answer is filed within the time set, the opposition may be decided as in case of default.” Moreover, except as otherwise provided in the Trademark Rules of Practice, procedural matters in an opposition are governed by the Federal Rules of Civil Procedure. See Trademark Rules of Practice 2.116(a). Rule 55 of the Federal Rules of Civil Procedure provides that, “[w]hen a party against whom a judgement for affirmative relief is sought has failed to plead or otherwise defend as provided by the rules,” a party may move for a judgement by default.” Fed. R. Civ. P. 55(a)-(b); see also, *Thrifty Corp. v. Biomax Enterprises*, Opp. No. 70,763, 228, U.S.P.Q. 62, 63 (1985), and *DeLorme Publishing Company, Inc. v. Eartha's, Inc.*, Opp. No. 116,102, 2000 TTAB LEXIS 790 at \*7 (granting default judgment in accordance with Rule 55 because of applicant’s failure to file an Answer within forty days).

The Opposition has been properly served on Applicant. See Exhibit A and Federal Rules of Civil Procedure Rule 5(b)(2)(B) (“Service by mail is complete on mailing.”). The forty-day answer period has elapsed without Applicant’s Answer or a request for an extension of time. As such, Applicant has waived its right to answer. This is exactly the type of behavior that Rule 2.106(a) is designed to deter. Accordingly, judgment by default should be granted to Bravo.

### **IV. CONCLUSION**

For all of the foregoing reasons, Bravo respectfully moves for an order seeking the entry of default judgment against Applicant and sustaining Opposition No. 91195312 in its favor.

Dated this 10<sup>th</sup> day of August, 2010.

Respectfully submitted,

By: /Carrie L. Kiedrowski/

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Attorneys for Opposer  
BRAVO | BRIO RESTAURANT GROUP

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document entitled MEMORANDUM IN SUPPORT OF OPPOSER'S MOTION FOR DEFAULT JUDGMENT was served on this 10<sup>th</sup> day of August, 2010 via U.S. Mail upon:

Tony Doll  
2010 Roosevelt Ave. Ste. 6  
Joplin, Missouri 64804-0266

/Carrie L. Kiedrowski/  
Attorney for Opposer

**Exhibit A**  
In the matter of Trademark Application No.  
77/900,343  
For the mark **POLLO BRAVO**  
Opposition No. 91195312

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

Mailed: June 16, 2010

Opposition No. 91195312  
Serial No. 77900343

TONY DOLL

2010 ROOSEVELT AVE STE 6  
JOPLIN, MO 64804-0266  
tonyd@specfoodinc.com

BRAVO | BRIO RESTAURANT GROUP

v.

Pollo Bravo LLC

Timothy P. Fraelich  
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Cleveland, OH 44114  
tfraclich@jonesday.com, clkiedrowski@jonesday.com, skoston@jonesday.com

**ESTTA353193**

**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/v?qs=91195312>.

**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	7/26/2010
Deadline for Discovery Conference	8/25/2010
Discovery Opens	8/25/2010
Initial Disclosures Due	9/24/2010
Expert Disclosures Due	1/22/2011
Discovery Closes	2/21/2011
Plaintiff's Pretrial Disclosures	4/7/2011
Plaintiff's 30-day Trial Period Ends	5/22/2011
Defendant's Pretrial Disclosures	6/6/2011
Defendant's 30-day Trial Period Ends	7/21/2011
Plaintiff's Rebuttal Disclosures	8/5/2011
Plaintiff's 15-day Rebuttal Period Ends	9/4/2011

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

**Exhibit A**  
**In the matter of Trademark Application No.**  
**77/900,343**  
**For the mark POLLO BRAVO**  
**Opposition No. 91195312**

(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>.