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

Proceeding	91199500
Party	Plaintiff Miller International, Inc.
Correspondence Address	John P. Schmitz Mills Schmitz & Zaloudek, LLC 1019 8th Street Golden, CO 80401 UNITED STATES jschmitz@mszlawfirm.com
Submission	Motion for Default Judgment
Filer's Name	John P. Schmitz
Filer's e-mail	jschmitz@mszlawfirm.com
Signature	/John P. Schmitz/
Date	06/01/2011
Attachments	Default Judgment Cinch to Win LLC.pdf (4 pages)(30500 bytes)

In The United States Patent and Trademark Office Before the Trademark Trial and Appeal Board

Miller International, Inc.)
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vs.)
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Cinch to Win, LLC)
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Opposition No. 91199500
Notice of Motion for Default
Judgment, Motion for Default
Judgment, and Proof of Service

To Cinch to Win, LLC and to its Attorneys of Record:

PLEASE TAKE NOTICE that Miller International, Inc. by this document and pursuant to 37 CFR § 2.127, moves the Trademark Trial and Appeal Board to enter default judgment in favor of Plaintiff on the grounds and for the reasons set forth in the accompanying Memorandum of Points and Authorities.

Memorandum of Points and Authorities

INTRODUCTION

This proceeding concerns defendant’s mark Cinch 2 Win serial number 85158824 and Plaintiff’s marks CINCH®, Registration Numbers # 2103956, 3331971, 3279259, 2691182, 3923400 and Serial Number 77325565; all are registered under the following respective International Classes IC 25: “Clothing, namely, men’s jeans, shirts, T-shirts, jackets, coats, hats and caps”, FIRST USE IN COMMERCE: 19960618; IC 3: ”Fragrances for personal use”, FIRST USE IN COMMERCE: 20060725. IC 8: “Knives for hobby use: pocket knives, sport knives, whittling knives”, FIRST USE IN COMMERCE: 20060622. IC 25: “caps, coats, hats, jackets, jeans, pants, shirts, shorts, T-shirts”, FIRST USE IN COMMERCE: 20060622. IC 25: “clothing, namely, jeans, pants, shorts, t-shirts, shirts, jackets, caps”, FIRST USE IN COMMERCE: 19960618. IC 18: “wallets”, FIRST USE IN COMMERCE: 20101026. IC 25: “western belts”, FIRST USE IN COMMERCE: Pending.

Miller International, Inc. is the registered owner of the Word Marks, CINCH CLASSIC®, CINCH TOWN®, ULTIMATE CINCH EXPERIENCE® and IT'S A CINCH, Registration Numbers 3254325, 3431885 and 3327338 and Serial Number 77940102 all are registered under the following respective International Classes IC 3: “fragrances for personal use”, FIRST USE IN COMMERCE: 20060725; IC 35: “retail stores, retail outlet booths featuring clothing, belts, headwear, footwear, outerwear, fragrances, knives”, FIRST USE IN COMMERCE: 20010700; IC 41: “arranging of contests”, FIRST USE IN COMMERCE: 20060300 and IC 25 and 35: “clothing and advertising services.”

Miller International, Inc. is the registered owner of the Word Marks, CINCH BRONZE LABEL/SLIM FIT®, CINCH GREEN LABEL/ORIGINAL FIT®, CINCH WHITE LABEL/RELAXED FIT® and CINCH RED LABEL/ SPECIAL EDITION®, Registration Numbers 3601176, 3601178, 3601177, and 3883278 and all are registered under the following respective International Class IC 25: “western jeans”, all FIRST USE IN COMMERCE: 20041230 and 2008929 for CINCH RED LABEL/SPECIAL EDITION®.

Miller International, Inc. is the registered owner of the Word Marks, CINCH BRONZE LABEL®, CINCH GREEN LABEL®, CINCH RED LABEL®, and CINCH WHITE LABEL®, Registration Numbers # 3729109, 3729107, 3729110 and 3729108 and all are registered under International Class IC 25: “western jeans”, all FIRST USE IN COMMERCE: 20090109 and 20080929 for CINCH RED LABEL®.

The Opposition filed by Plaintiff on April 19, 2011 opposed the defendant’s mark based upon the following:

1. Likelihood of Confusion
2. Misdescriptive and Deceptiveness
3. Distinctiveness
4. Unfair Competitive Advantage

5. Trade Directories
6. Infringement

The present motion is a motion for default judgment for failure to answer the opposition by May 29, 2011.

RELEVANT STATUTORY AUTHORITY:

Federal Rule of Civil Procedure 55(a) states that “When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.”

ARGUMENT:

Plaintiff properly filed and served the Defendant on April 19, 2011 with a Notice of Opposition as shown in the records of the Trademark Trial and Appeal Board. Defendant had until May 29, 2011 to file with the Trademark Trial and Appeals Board an answer, or a motion to extend time to answer the opposition. Defendant has failed to filed such papers and therefore, pursuant to Fed. R. Civ. P. 55(a), Plaintiff requests entry of default judgment.

CONCLUSION:

For the foregoing reasons, it is submitted that good grounds exist for granting the motion, and such action is requested.

June 1, 2011

By: /s/ John P. Schmitz, Esq.

Attorney of Record for Plaintiff Miller
International, Inc.

PROOF OF SERVICE

I am a resident of the State of Colorado and licensed to practice law in the states of Colorado and California. My business address is: Mills Schmitz & Zaloudek LLC, Attn: John P. Schmitz, Esq., 1019 8th Street, Suite 301, Golden CO. On the date set forth below, I served the within document(s):

NOTICE OF OPPOSITION Against Cinch To Win, LLC via the attorney of record: KENNETH S. WEITZMAN, Esq.

√ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Golden, Colorado addressed as set forth below.

Kenneth S. Weitzman, Esq.
Weitzman Law Offices, LLC
425 Eagle Rock Avenue, Suite 102
Roseland, NJ 07068-1717

I declare under penalty of perjury under the laws of the State of Colorado that the foregoing is true and correct. Executed on **June 1, 2011** at Golden, Colorado.

/s/John P. Schmitz
JOHN P. SCHMITZ, ESQ.