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Filing date: **01/12/2012**

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

Proceeding	91202391
Party	Defendant TMS International Corp
Correspondence Address	R. JOSEPH TROJAN TROJAN LAW OFFICES 9250 WILSHIRE BLVD STE 325 BEVERLY HILLS, CA 90212-3376 UNITED STATES trojan@trojanlawoffices.com
Submission	Answer
Filer's Name	R. Joseph Trojan, Attorney for Defendant
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Signature	/R. Joseph Trojan/
Date	01/12/2012
Attachments	resp to not of default.pdf (3 pages)(75332 bytes) Answer to Opp.pdf (7 pages)(102962 bytes)

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

_____)
Altadis U.S.A. Inc.)
)
Opposer,)
)
v.)
)
TMS International Corp.,)
)
Applicant.)
_____)

**Opposition No. 91202391
Serial No. 85366925
Mark: DUTCH**

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

APPLICANT’S RESPONSE TO THE NOTICE OF DEFAULT

This is in response to the notice of default mailed on December 12, 2011. Applicant submits that default should not be entered for the following reasons and moves that the Board reopen proceedings:

- (a) Applicant operates as a small business and contemplated the merits of the action in light of its reluctance to engage in a costly legal dispute with Opposer, a significantly larger company, during current depressed economic conditions. Applicant intended to answer sooner but its indecision and delay in evaluating the merits of the Opposition has been exacerbated by its busy holiday sales schedule. For these reasons, Applicant’s delay in filing its Answer was not the result of willful conduct or gross neglect on the part of Applicant.

(b) The thirty-day delay in filing Applicant's Answer will not substantially prejudice Opposer, as thirty days is not a significant delay of time.

(c) As discussed in detail in the Answer submitted herewith, Applicant has a meritorious defense to the action because there is no likelihood of confusion between Applicant's mark and Opposer's pleaded marks.

Based on the foregoing, Applicant respectfully requests that the default be quashed and that the Board accept Applicant's Answer submitted herewith.

Respectfully submitted,
TROJAN LAW OFFICES

Dated: January 12, 2012

By: /R. Joseph Trojan/
R. Joseph Trojan
Attorney for Applicant, TMS International Corp.
9250 Wilshire Blvd., Suite 325
Beverly Hills, CA 90212
Tel: (310) 777-8399
Fax: (310) 777-8348

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing APPLICANT'S RESPONSE TO THE NOTICE OF DEFAULT has been served on Charles W. Grimes by mailing said copy on January 12, 2012, via First Class Mail, postage pre-paid, to:

Charles W. Grimes
Grimes & Battersby LLC
488 Main Avenue Third Floor
Norwalk, CT 06851

/R. Joseph Trojan/
R. Joseph Trojan

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APPLICANT’S ANSWER TO THE NOTICE OF OPPOSITION

Applicant TMS International Corp. (“Applicant”), by his attorneys, answers the Notice of Opposition filed by Altadis U.S.A. Inc. (“Opposer”) in the above-referenced matter as follows:

RESPONSES TO ALLEGATIONS IN THE NOTICE OF OPPOSITION

COUNT I

1. Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained in paragraph 1 of the Notice of Opposition and accordingly denies the allegations.

2. Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained in paragraph 2 of the Notice of Opposition and accordingly denies the allegations.

3. Applicant does not have sufficient knowledge to confirm or deny the allegations set forth in this paragraph. On that basis Applicant denies the allegations set forth in paragraph 3 of the Notice of Opposition.

4. Applicant admits that certain documents identified as Exhibits A through F were annexed to the Notice of Opposition, said Exhibits purporting to be certain registration statuses generated by the USPTO electronic database, and Applicant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 4 of the Notice of Opposition, and accordingly denies the same.

5. Applicant does not have sufficient knowledge to confirm or deny the allegations set forth in this paragraph. On that basis Applicant denies the allegations set forth in paragraph 5 of the Notice of Opposition.

6. Applicant does not have sufficient knowledge to confirm or deny the allegations set forth in this paragraph. On that basis Applicant denies the allegations set forth in paragraph 6 of the Notice of Opposition.

7. Applicant does not have sufficient knowledge to confirm or deny the allegations set forth in this paragraph. On that basis Applicant denies the allegations set forth in paragraph 7 of the Notice of Opposition.

8. Applicant does not have sufficient knowledge to confirm or deny the allegations set forth in this paragraph. On that basis Applicant denies the allegations set forth in paragraph 8 of the Notice of Opposition.

9. Applicant does not have sufficient knowledge to confirm or deny the allegations set forth in this paragraph. On that basis Applicant denies the allegations set forth in paragraph 9 of the Notice of Opposition.

10. Applicant denies the allegations set forth in paragraph 10 of the Notice of Opposition.

11. Applicant does not have sufficient knowledge to confirm or deny the allegations set forth in this paragraph. On that basis Applicant denies the allegations set forth in paragraph 11 of the Notice of Opposition.

12. Applicant denies the allegations set forth in paragraph 12 of the Notice of Opposition.

13. Applicant denies the allegations set forth in paragraph 13 of the Notice of Opposition.

14. Applicant admits the allegations set forth in paragraph 14 of the Notice of Opposition.

15. Applicant denies the allegations set forth in paragraph 15 of the Notice of Opposition.

16. Applicant denies the allegations set forth in paragraph 16 of the Notice of Opposition.

17. Applicant denies the allegations set forth in paragraph 17 of the Notice of Opposition.

18. Applicant denies the allegations set forth in paragraph 18 of the Notice of Opposition.

19. Applicant denies the allegations set forth in paragraph 19 of the Notice of Opposition.

COUNT I

20. Applicant repeats and realleges Paragraphs 1 through 19 as though fully set forth herein.

21. Applicant denies the allegations set forth in paragraph 21 of the Notice of Opposition.

22. Applicant denies the allegations set forth in paragraph 22 of the Notice of Opposition.

23. Applicant denies the allegations set forth in paragraph 23 of the Notice of Opposition.

All averments not specifically admitted are denied.

AFFIRMATIVE DEFENSES

Applicant repeats and realleges its responses in the above paragraphs as if set forth fully herein. Answering further, Applicant avers:

24. Opposer fails to state a claim upon which relief may be granted.

25. Opposer lacks standing.

26. There is no likelihood of confusion, mistake or deception because, *inter alia*, Applicant's mark and the pleaded marks of Opposer are not confusingly similar.

27. There is no likelihood of confusion, mistake or deception because, *inter alia*, Applicant's goods and Opposer's goods are not related and do not travel in the same channels of trade. There is no significant overlap in the consumers of cigars, especially DUTCH MASTER cigars, and the purchasers of hookahs. Opposer's website, www.altadisusa.com, exclusively advertises and sells cigars and cigar accessories. Cigars and hookahs are distributed through different channels of trade, substantially sold in different types of stores, advertised in different

media, and have distinctively different consumers. Most sales of hookahs are made through stores specializing in the sale of hookahs and related paraphernalia.

28. There is no likelihood of confusion, mistake, or deception because, *inter alia*, Applicant's mark and the pleaded marks of Opposer have different meanings. Opposer's pleaded "DUTCH MASTER" trademarks are strongly associated with the Dutch Renaissance through the continuous use for over 100 years of art by Rembrandt, the Old World Master Dutch painter, as part of the DUTCH MASTER logo. Applicant's mere use of the word DUTCH for hookahs does not create an association in the mind of consumers with DUTCH MASTER cigars. Hookahs are not associated with the 17th Century Dutch Renaissance. DUTCH is a fanciful term as applied to Hookahs and, if any meaning is associated with it at all, it is likely to be associated with the slang term for "Going Dutch," meaning paying your own way, which in an abstract sense is suggested by hookahs having multiple hoses attached where each smoker has his or her own hose. Hence, the mental associations in the minds of consumers are likely to be very different.

29. Applicant presently has insufficient knowledge or information upon which to form a belief as to whether it may have additional, as yet unstated, affirmative defenses available. Applicant reserves the right to assert additional affirmative defenses as may become available in this Opposition.

WHEREFORE, Applicant requests that the Opposition of Altadis U.S.A., Inc. be dismissed and that Applicant's mark be issued a Certificate of Registration upon the principal register of the United States Patent and Trademark Office.

Respectfully submitted,
TROJAN LAW OFFICES

Dated: January 12, 2012

By: /R. Joseph Trojan/

R. Joseph Trojan

Attorney for Applicant, TMS International Corp.

9250 Wilshire Blvd., Suite 325

Beverly Hills, CA 90212

Tel: (310) 777-8399

Fax: (310) 777-8348

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing APPLICANT'S ANSWER TO THE NOTICE OF OPPOSITION has been served on Charles W. Grimes by mailing said copy on January 12, 2012, via First Class Mail, postage pre-paid, to:

Charles W. Grimes
Grimes & Battersby LLC
488 Main Avenue Third Floor
Norwalk, CT 06851

/R. Joseph Trojan/
R. Joseph Trojan