

ESTTA Tracking number: **ESTTA519309**

Filing date: **02/01/2013**

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

Proceeding	91206994
Party	Plaintiff Hope Wine LLC
Correspondence Address	SHALEEN SHEIK-SADHAL ESSE LAW GROUP 420 SOUTH MOUNTAIN GLEN ROAD ANAHEIM HILLS, CA 92807 UNITED STATES shaheen@esselaw.com
Submission	Motion for Default Judgment
Filer's Name	Shaheen Sheik-Sadhal
Filer's e-mail	shaheen@esselaw.com
Signature	/Shaheen Sheik-Sadhal/
Date	02/01/2013
Attachments	Opposer's MDJ Resubmittal.pdf ( 18 pages )(1286934 bytes )

1 Shaheen Sheik-Sadhal  
Esse Law Group  
420 South Mountain Glen Road  
2 Anaheim Hills, CA 92807  
Tel: (310) 455-6761  
3 Fax: (310) 881-1227  
shaheen@esselaw.com  
4

5 UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD  
6

7  
8 Hope Wine, LLC, )

) Opposition No.: 91206994

9 Opposer, )

) Serial No.: 85562966

10 vs. )

) For: CASES FOR CAUSES

11 Uncommon, LLC, )

) **OPPOSER'S RESUBMITTAL OF MOTION  
FOR DEFAULT JUDGMENT**

12 Applicant. )

) Filed concurrently:  
[Declaration of Shaheen Sheik-  
Sadhal]

14  
15 Pursuant to 37 C.F.R. § 2.106(a), Opposer, Hope Wine, LLC ("Hope  
16 Wine"), hereby resubmits its motion for default judgment against  
17 Applicant, Uncommon, LLC ("Uncommon") for failure to timely answer  
18 Hope Wine's Opposition. In support of this Motion, Hope Wine sets  
19 forth the following:  
20

21 **BACKGROUND**

22 On August 16, 2012, the TTAB granted Hope Wine's request for an  
23 Extension of Time to oppose Applicant's trademark filing for "CASES  
24 FOR CAUSES" (the "Mark"), extending the time by 30 days. On September  
25 14, 2012, the TTAB received and instituted Hope Wine's Opposition,  
26 giving Uncommon 40 days to file an answer.

27 On October 23, 2012, the day before Applicant's answer was due,  
28 Applicant's counsel, Nicholas S. Lee ("Lee"), contacted Opposer's  
29 counsel, Shaheen Sheik-Sadhal ("Sheik-Sadhal"), via email notifying  
30

31  
32 10/23/12 Email from Nicholas S. Lee to Shaheen Sheik-Sadhal is attached to  
the accompanying Declaration of Shaheen Sheik-Sadhal ("Sadhal Decl.") at ¶4,  
Exh. A.

1 her of its intention to file an extension of time to respond as well  
2 as asking for Opposer's disposition as to whether Opposer would be  
3 amenable to settling the case. Sheik-Sadhal spoke to Lee late in the  
4 day of October 23, 2012 notifying Lee that she was unable to reach  
5 Opposer. The next day, having been unable to reach Opposer to discuss  
6 the case with less than 24 hours for Applicant to file an answer,  
7 Sheik-Sadhal contacted Lee via phone relaying said difficulty.<sup>2</sup> On  
8 October 24, 2012, Uncommon submitted a motion for an extension of time  
9 to file an answer, requesting 14 additional days; Hope Wine did not  
10 oppose this motion.

11 On October 25, 2012, Lee emailed a copy of the "Ex Parte Motion  
12 for Extension of Time to Respond to Opposer Hope Wine's Notice of  
13 Opposition" again inquiring whether Hope Wine would be open to  
14 discussing settlement options.<sup>3</sup> On October 29, 2012 and again over a  
15 month later on December 3, 2012, Sheik-Sadhal emailed Lee requesting a  
16 settlement proposal from Applicant.<sup>4</sup> Both times, these emails elicited  
17 no response from Lee as Applicant's counsel.

18 By December 10, 2012, 42 days and counting after the initial  
19 deadline of October 24, 2012, Uncommon had yet to file an answer to  
20 Hope Wine's Opposition or make any efforts toward settlement of the  
21 case. That same day, Opposer filed its Motion for Default Judgment  
22 with the Trademark Trial and Appeal Board (the "TTAB").

23 On January 16, 2013, Ms. Elizabeth Winter, the Interlocutory  
24 Attorney for the TTAB issued an order granting Applicant a final  
25 extension to file its answer on or before January 31, 2013, stating  
26 that no further extension would be granted to Applicant.  
27 Additionally, Ms. Winter deemed Opposer's Motion for Default Judgment

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30 <sup>2</sup> Sadhal Decl. at ¶3.

31 <sup>3</sup> 10/25/12 Email from Lee to Sheik-Sadhal attached to Sadhal Decl. at ¶5, Exh.  
B.

32 <sup>4</sup> 10/29/12 Email from Sheik-Sadhal to Lee and 12/3/12 Email from Sheik-Sadhal  
to Lee attached to Sadhal Decl. at ¶6 and ¶7, Exh. C. and Exh. D.,  
respectively.

1 premature and notified the parties that the motion would not be  
2 considered.

3 Based on that order and given that Applicant has failed to answer  
4 by the final deadline of January 31, 2013, Opposer hereby resubmits  
5 its Motion for Default Judgment for consideration  
6

7 **ARGUMENT**

8 Under 37 C.F.R. § 2.106(a), "If no answer is filed within the  
9 time set, the opposition may be decided as in case of default." While  
10 entry of default judgment is a harsh remedy in certain cases, such  
11 remedy is appropriate in situations such as this given Uncommon's  
12 actions or, more appropriately, lack thereof.

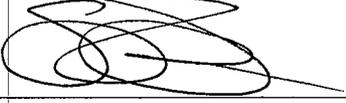
13 Because Uncommon blatantly disregarded the deadline set by the  
14 Board by not seeking an extension until the day the Answer was  
15 initially due, then similarly exceeded the deadline set by its own  
16 requested extension of 14 days and once again with the final deadline  
17 set by the TTAB of January 31, 2013, has made no attempt to show good  
18 cause for these delays, and has made no attempt to settle the case,  
19 default judgment would not prejudice the Applicant. Moreover, even if  
20 an argument were to be made that Uncommon may experience any prejudice  
21 from a default judgment being entered, said prejudice would be the  
22 result of Uncommon's own doing.  
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1 **PRAYER FOR RELIEF**

2 For the reasons above, Hope Wine respectfully requests that the  
3 Board grant default judgment in its favor and against the Applicant.  
4

5  
6 DATED: February 1, 2013

Respectfully submitted,  
ESSE LAW GROUP

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9 By: 

10 Shaheen Sheik-Sadhal  
11 Attorney for Hope Wine, LLC  
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Exhibit A

[Please see attached]

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## Shaheen Sheik-Sadhal

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**From:** Nicholas S. Lee <nlee@bishoppatents.com>  
**Sent:** Tuesday, October 23, 2012 8:48 AM  
**To:** shaheen@esselaw.com  
**Subject:** CASES FOR CAUSES; Opposition No. 91206994

Dear Ms. Sadhal:

I represent Uncommon LLC in the matter involving the opposition for the mark CASES FOR CAUSES. I am writing to you because it appears that it will not be feasible for us to respond to the petition filed on 9/14/12 before its due date of 9/24/12. I would therefore like to discuss a mutually agreeable extension as well as other matters relating to the case, in particular whether your client would be amenable to settle this case by way of, e.g., a concurrent use.

Please advise if you are available later today before 3 pm CST or tomorrow to discuss.

Thank you.

Best regards,

Nicholas S. Lee  
BISHOP& DIEHL, LTD.  
1750 East Golf Road, Suite 390  
Schaumburg, IL 60173  
Direct: (847) 925-9638  
Office: (847) 969-9123 x 203  
Facsimile: (847) 969-9124  
Skype ID: nicklesq

[www.bishoppatents.com](http://www.bishoppatents.com)

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Exhibit B

[Please see attached]

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## Shaheen Sheik-Sadhal

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**From:** Nicholas S. Lee <nlee@bishoppatents.com>  
**Sent:** Thursday, October 25, 2012 10:09 AM  
**To:** Shaheen Sheik-Sadhal  
**Subject:** RE: CASES FOR CAUSES; Opposition No. 91206994  
**Attachments:** 20121024\_motion\_for\_extension\_of\_time\_002009\_W0104.pdf.pdf

Shaheen:

Please see the attached motion for extension of time filed yesterday.

I also wanted to follow up with you whether you know if your client would be interested in discussing a possibility of amicable settlement before this matter becomes expensive for the parties.

Please advise.

Best regards,

Nicholas S. Lee  
BISHOP& DIEHL, LTD.  
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**From:** Shaheen Sheik-Sadhal [<mailto:shaheen@esselaw.com>]  
**Sent:** Tuesday, October 23, 2012 11:42 AM  
**To:** Nicholas S. Lee  
**Subject:** RE: CASES FOR CAUSES; Opposition No. 91206994

Dear Nicholas:

Unfortunately I don't have time today to discuss by 3pm CST. I will need to confer with my client about your request. Will do my best to get back to you this evening via email or touch base with you tomorrow.

Sincerely,  
Shaheen

**From:** Nicholas S. Lee [mailto:nlee@bishoppatents.com]  
**Sent:** Tuesday, October 23, 2012 8:48 AM  
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Exhibit C

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## Shaheen Sheik-Sadhal

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**From:** Shaheen Sheik-Sadhal <shaheen@esselaw.com>  
**Sent:** Monday, October 29, 2012 12:58 PM  
**To:** 'Nicholas S. Lee'  
**Subject:** RE: CASES FOR CAUSES; Opposition No. 91206994

Nicholas,

Please draft a brief letter outlining the terms of your client's settlement offer so I may present to my client.

Thank you,  
Shaheen

**From:** Nicholas S. Lee [<mailto:nlee@bishoppatents.com>]  
**Sent:** Thursday, October 25, 2012 10:09 AM  
**To:** Shaheen Sheik-Sadhal  
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Exhibit D

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## Shaheen Sheik-Sadhal

---

**From:** Shaheen Sheik-Sadhal <shaheen@esselaw.com>  
**Sent:** Monday, December 03, 2012 11:39 AM  
**To:** 'Nicholas S. Lee'  
**Cc:** Peter Kovalsky  
**Subject:** RE: CASES FOR CAUSES; Opposition No. 91206994

Nicholas,

I've not heard from you since I wrote over a month ago requesting your client to draft a settlement offer to present to my client. I've also not seen an answer to our original opposition filed with the USPTO. Can you please update me on whether your client plans to propose a settlement offer and/or file a response?

Thank you.

Cheers,  
Shaheen

**From:** Shaheen Sheik-Sadhal [<mailto:shaheen@esselaw.com>]  
**Sent:** Monday, October 29, 2012 12:58 PM  
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**To:** [shaheen@esselaw.com](mailto:shaheen@esselaw.com)  
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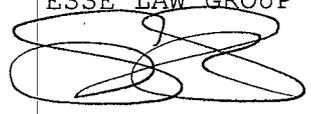
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6 TRADEMARK TRIAL AND APPEAL BOARD

7  
8 Hope Wine, LLC, )  
9 Opposer, ) Opposition No.: 91206994  
10 vs. ) Serial No.: 85562966  
11 Uncommon, LLC, ) For: CASES FOR CAUSES  
12 Applicant. ) **CERTIFICATE OF SERVICE FOR**  
**OPPOSER'S RESUBMITTAL OF MOTION**  
**FOR DEFAULT JUDGMENT**

13  
14  
15  
16 The undersigned, as attorney of record for Hope Wine, LLC, hereby  
17 certifies that a copy of Opposer's Resubmittal of Motion for Default  
18 Judgment as filed with the USPTO was served upon Applicant Uncommon,  
19 LLC at their address of record by First Class Mail on February 1,  
20 2013.

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22 DATED: February 1, 2013

Respectfully submitted,  
ESSE LAW GROUP

23  
24 

25 By: \_\_\_\_\_  
26 Shaheen Sheik-Sadhal  
27 Attorney for Hope Wine, LLC