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

Proceeding	91209007
Party	Plaintiff Arthur Gross III
Correspondence Address	Arthur Gross III 12 Medici Aisle Irvine, CA 92606 UNITED STATES art@magnumcellars.com
Submission	Motion for Default Judgment
Filer's Name	Arthur Gross III
Filer's e-mail	art@magnumcellars.com
Signature	/Arthur GrossIII/
Date	03/05/2013
Attachments	Default MBG Kids.pdf (6 pages)(57918 bytes)

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

OPPOSITION NO. 91209007

SERIAL NO. 85637842

Arthur Gross III,

Opposer,

v.

MBG Apparel, Inc.

Applicant,

**NOTICE OF MOTION AND
MOTION FOR DEFAULT JUDGEMENT
FAILURE TO ANSWER
AFFIDAVIT IN SUPPORT OF PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT.**

PLEASE TAKE NOTICE, that pursuant to Plaintiffs' Memorandum of Points in Support of Motion for Judgment by Default, the Affidavit in Support of Motion for Judgment by Default, and upon all prior proceedings had herein, Plaintiff GROSS will move this TTAB on March 5, 2013 or as soon thereafter as it can be heard, for a default judgment against Defendant MBG Apparel, Inc., together with such other and further relief as the Court deems just and proper.

This notice is given pursuant to the provision of Rules 5 and 55(b)(2) of the Federal Rules of Civil Procedure.

MEMORANDUM

Opposer Arthur Gross III ("GROSS") hereby requests that TTAB enter default in this matter against MBG Apparel, Inc. ("MBGA"), on the grounds that said defendant have failed to appear or otherwise respond to the complaint within the time prescribed by the USPTO 508 and Federal Rules of Civil Procedure, Rule 55.

GROSS served the Notice and Opposition on defendant on 1/23/2013.

On 1/23/2013 TTAB set Notice and Trial Dates Set: Answer Due allowing MBGA until 3/04/2013 to answer the Opposition.

MBGA failed to answer the Opposition by February 4, 2013, as ordered by TTAB.

As of March 5, 2013... NO Answer or NO attorney has responded to TTAB regarding this Opposition. Pursuant to TBMP 508 and FRCP, GROSS is entitled to request a judgment in default.

The motion is uncontested.

In as much as applicant failed to file an answer in this case, and failed to respond to opposer's motion in any manner, the motion for default judgment should be granted. See Trademark Rule 2.127(a). Accordingly, judgment should be entered against applicant, the notice of opposition should be sustained, and registration to applicant refused. See Fed. R. Civ. P. 55 and Trademark Rule 2.127(a).

"If a defendant fails to file an answer to a complaint during the time allowed therefor, the Board, on its own initiative, may issue a notice of default allowing the defendant time to show cause why default judgment should not be entered against it. The issue of whether default judgment should be entered against a defendant for failure to file an answer may also be raised by means of a motion

filed by the party in the position of plaintiff. In such cases, the motion may serve as a substitute for the Board's issuance of a notice of default."

CONCLUSION

Plaintiff has filed well pleaded factual allegations in his opposition and is being harmed financially and heavily prejudiced by MBGA's failing to respond, delaying this action and counterfeiting GROSS's registered and common law marks, Made by God, MBG and MBG Kids. Defendants have failed to obey TTAB's order and respond to plaintiff's opposition, and it is unforeseeable that there could be any possible circumstance, or excuse as to why no counsel or answer has been submitted to this Honorable TTAB.

Opposer, GROSS hereby respectfully requests that TTAB enter a Default Judgment against MBGA and that GROSS's Petition for Opposition be GRANTED in its entirety, for application Serial No. 85637842, Made by God and be rejected from Registration with the USPTO.



Dated: March 5, 2013

Arthur Gross III
Plaintiff in Pro Se
12 Medici Aisle
Irvine, CA 92606
949-679-4858

AFFIDAVIT IN SUPPORT OF PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT.

Plaintiff, GROSS moves for judgment against the defendant(s) MBG Apparel, Inc., because the named defendant (s) failed to plead or otherwise defend in this action within the time allowed by law.

I Arthur Gross III, declare;

This affidavit is a made part of this motion.

1. I am the plaintiff in this action.
2. Defendant(s) named herein is not in the armed forces of the United States

Supporting facts are: They are a Florida Corporation.

3. Defendants are infringing on Trademarks and products that Plaintiff has already registered or are common law marks. The mark MBGKIDS is the developed brand of clothing and credit cards by Plaintiff and has had interstate commerce sales as early as 2007. The sales and marketing have been continuing and ongoing to this date without interruption.
4. Defendants proposed mark "MBGKIDS" is identical to GROSS's.
5. Defendants have never used the mark and never developed the brand and their application is a 1 (b) intent to useGROSS has been using the "MBG Kids" brand for over 3 Years.
6. Defendants refuse to defend their marks and participate in this action.

7. The acronym MBG means Made by God, by allowing defendants this Mark would create confusion in the marketplace, as to the origin of the products.

7. I state under penalty of perjury that the foregoing is true and correct.



Dated: March 5, 2013

Arthur Gross III
Plaintiff in Pro Se
12 Medici Aisle
Irvine, CA 92606
949-679-4858

PROOF OF SERVICE

I, Arthur Gross III, hereby declare under the penalty of perjury that I served Notice and Motion for Default Judgment and Affidavit in support of Plaintiff's Motion for Default Judgment. in a sealed envelope, postage paid, by U.S. First Class Mail, at the US Post Office in the City of Irvine, CA 92606 on March 5, 2013, at 3:18 pm. To the following recipient and address:

C/O Mayra Guzman
MBG Apparel, Inc.,
#131 18520 NW 67Th Ave
Miami FLORIDA 33015



Dated: March 5, 2013,

Arthur Gross III
Plaintiff in Pro Se
12 Medici Aisle
Irvine, CA 92606
949-679-4858