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

Proceeding	91214933
Party	Plaintiff AlfredoRomo Dimas
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re the application of:

Favian Tapia and Delia Tapia
Application Ser. No. 85/771636
Filed: November 5, 2012
Mark: EL ROMANTICO SAMURAY
Published in the Office Gazette of November
26, 2013

Alfredo Romo Dimas, Individual

Opposer,

vs.

Favian Tapia and Delia Tapia,

Applicants.

Opposition No. 91214933

In the Matter of

Ser. No. 85/771636

MOTION FOR DEFAULT JUDGMENT

TO APPLICANTS FAVIAN TAPIA AND DELIA TAPIA:

PLEASE TAKE NOTICE that Opposer Alfredo Romo Dimas by this document and pursuant to sections 312.01 and 508 of the Trademark Trial and Appeal Board Manual of Procedure, as well as 37 CFR §§ 2.106(a) and 2.114(a) and Rule 55 of the Federal Rules of Civil Procedure, hereby moves the Trademark Trial and Appeal Board to enter default judgment against Applicants Favian Tapia and Delia Tapia for failure to answer the Opposition herein within the time allowed.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is an opposition proceeding instituted by Opposer Alfredo Romo Dimas to the application Ser. No. 85/771636 of the mark EL ROMANTICO SAMURAY filed by applicants on

November 5, 2012 and published on November 26, 2013. Notice of filing of the petition was mailed by the TTAB on February 15, 2014. As of the date of this motion, no answer has been filed by the Applicants, although they have moved to suspend this action, which motion the Opposer is opposing in a separate filing.

II. RELEVANT STATUTORY AUTHORITY

A. The time for filing of an answer to petitioner's petition for cancellation is 40 days from date of mailing of notification by TTAB. TBMP 310.03(a) provides as follows:

As provided by 37 CFR 2.105(a) and 2.113(a), in part, the Board's notification of the filing of an opposition or petition to cancel "shall designate a time, not less than thirty days from the mailing date of the notification, within which an answer must be filed." It is the general practice of the Board to allow the defendant in an opposition or cancellation proceeding 40 days from the mailing date of the notification in which to file its answer.

B. If the registrant fails to answer the petition for cancellation within the time provided, default may be entered either (1) following service of a notice of default by the Board to which the registrant fails to respond within twenty (20) days, or (2) failing issuance of such notice by the Board, following the motion of the Petitioner. TBMP 312.01 reads as follows:

37 CFR 2.106(a). If no answer is filed within the time set, the opposition may be decided as in case of default.

. . . .

If a defendant fails to file an answer to a complaint during the time allowed therefor, the Board may issue a notice of default. The notice states that no answer has been filed; enters notice of default under FRCP 55(a); and allows the defendant 30 days from the mailing date of the notice in which to show cause why default judgment should not be entered against it. If the defendant fails to file a response to the notice, or files a response which does not show good cause, default judgment may be entered against it. (citations omitted).

. . . .

The issue of whether default judgment should be entered against a defendant, for failure to file a timely answer to the complaint, may also be raised by means other than the Board's issuance of a notice of default. For example, the plaintiff, realizing that the defendant is in default, may file a motion for default judgment (in which case the motion may serve as a substitute for the Board's

issuance of a notice of default); or the defendant itself, realizing that it is in default, may file a motion asking that its late- filed answer be accepted. However the issue is raised, the standard for determining whether default judgment should be entered against the defendant for its failure to file a timely answer to the complaint is the FRCP 55(c) standard, that is, whether the defendant has shown good cause why default judgment should not be entered against it. (citations omitted.)

TBMP § 312.01

C. Applicants have 20 days from the date of service by mail of Opposer's motion for default judgment to file their brief in response to Opposer's motion. TBMP 502.02(b). If Applicants fail to timely file a brief, Opposer's motion is deemed conceded. TBMP 502.04

D. If the Applicants fail to timely file a brief in reply to Opposer's motion for default judgment, default judgment may be entered against Applicants. TBMP 508 in relevant part provides as follows:

If a plaintiff files a motion for default judgment for failure of the defendant to file a timely answer to the complaint, and the defendant fails to file a brief in opposition to the plaintiff's motion, default judgment may be entered against defendant. (citations omitted.)

III. ARGUMENT

The notice of Opposer's Opposition was mailed by the TTAB on February 15, 2014. The forty-day period within which the Applicants were to answer the petition under the manual of procedure expired on March 27, 2014.

Opposer has received no copy of a notice of default issued by the TTAB; if, however, such notice has been served, Applicants have 20 days from service of such notice to file a response. If such notice has been served, and Applicants have failed to respond, the TTAB is urged to enter default judgment in Opposer's favor forthwith.

No notice of default having been received from the Board, Opposer makes the instant motion for entry of default judgment against applicants. Assuming the TTAB has not already entered default judgment against Applicants due to Applicants' failure to respond to any TTAB

notice of default, Applicants have 20 days from the date of service by Opposer of this motion for default judgment to file and serve their response. If Applicants fail to file such a response within the time specified, the motion should be deemed conceded and should be granted forthwith.

IV. CONCLUSION

For the foregoing reasons, it is submitted that good grounds exist for granting the motion for default judgment, and such action is requested. If Applicants fail to file their response within 20 days of the date of service of this motion, this motion should be granted forthwith and Applicants' Application should be dismissed.

If the Board has already issued a notice of default and the 20-day period for reply has expired, then Opposer requests the alternative relief that the Board grant immediate default judgment against the Applicants and that their Application herein be dismissed.

Dated: April 1, 2014

Respectfully submitted,

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