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

Proceeding	91215751
Party	Plaintiff BB Pharmaceuticals, Inc. dba FARMAESTHETICS
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Attachments	REPLYBRIEFINSUPPORTMotionforDefaultJudgementOppositionExtension-Timev4.pdf(17780 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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BB Pharmaceuticals, Inc. dba)	
Farmaesthetics)	
Opposer,)	Opposition No. 91215751
)	
v.)	Application S.N.
)	85/658,031
)	
Skinny Pineapple, Inc.)	
Applicant)	
)	

**REPLY BRIEF IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT FOR
FAILURE TO ANSWER and OPPOSITION TO EXTENSION OF TIME**

Motion for Default Judgment for Failure to Answer

Opposer, BB Pharmaceuticals, Inc., files this reply brief in support of its previously filed Motion for Default Judgment for Applicant’s Failure to File an Answer and Opposition to Extension of Time. Applicant Skinny Pineapple, Inc., (“Applicant”) has not filed an answer to the Notice of Opposition for U.S. Trademark Application Serial No. 85/658,031 (‘031 Application) in this matter by the June 13, 2014 deadline. If no Answer to a Notice of Opposition is filed within the time set, June 13, 2014, “the opposition may be decided as in case of default.” 37 C.F.R. 2.160(a). For purposes of the Board’s convenience, the Opposer shall recite a timeline of important events in this proceeding:

5/14/2014 – Applicant fails to file an Answer - for the **first time**.

6/13/2014 – Applicant fails to file an Answer - for the **second time**.

6/27/2014 – Assuming arguendo, Applicant fails to file an Answer - for the **third time.**

7/7/2014 – Applicant fails to provide “good cause” for failing to file an Answer three (3) times and, assuming arguendo, also fails to file for an Extension of Time to file Answer beyond 6/27/2014.

In addition, notwithstanding Applicant’s Motion dated July 7, 2014, Applicant still failed to file for an Extension of Time to file an Answer beyond 6/27/2014. Assuming arguendo, if all of the Applicant’s Extensions of Time were granted, which they should not be for at least the reasons stated below and previously, the latest date for filing the Answer would be 6/27/2014 which the Applicant also failed to do.

Applicant still has not shown good cause why default judgment should not be entered against it for the reasons below.

1.The Delay in Filing of An Answer was the Result of Willful Conduct or Gross Neglect on the Part of the Applicant

As admitted by the Applicant, the Applicant has failed to contact Opposer or Opposer’s counsel not a single time before it filed three (3) unconsented requests for extension of time, failed to provide proper service of papers, and completely disregarded two, and assuming arguendo, three deadlines to file an Answer. As a whole, the delay of filing, THREE TIMES, was the result of willful conduct or gross neglect.

2.The Opposer Has Been Substantially Prejudiced by Delay

The Opposer has been trying to resolve this matter with Applicant since December 2013, or for at least seven months. Opposer has sent a cease and desist letter in December,

properly serviced all papers to Applicant, provided timely notice to Applicant, abided by all of the rules and deadlines set by the Board, and when finally contacted by Applicant - only after filing a Motion for Default - attempted to resolve the matter without success. The continuance of this proceeding and delay is unfairly prejudicing the Opposer and preventing the Opposer from moving forward with its business plans and daily operations and also requiring the Opposer to needlessly spending time and money on this willfully delayed proceeding by Applicant.

3.The Applicant does not have a meritorious defense to this action.

The Mark THE FARM of the '031 Application is merely descriptive and/or generic under Section 2(e)(1), the Mark THE FARM of the '031 Application is directed to goods which are not lawful in use in commerce under Section 1 and 45 of the Trademark Act (which was not refuted by Applicant in an Office Action sent to Applicant for an original filing of the same mar), and the Mark THE FARM of the '031 Application is confusingly similar to the Opposer's mark FARMAESTHETICS for almost identical goods. Applicant has not asserted any meritorious defense to any of these claims.

Therefore, based upon the items 1-3 above, Applicant still has not shown good cause why default judgment should not be entered against it.

Therefore, the Opposer strongly urges the Board to enter the default and refuse registration, render unenforceable, and/or restrict based upon at the least the grounds set forth above of U.S. Trademark Serial No. 85/658,031.

Opposition to Request for Extension of Time to Answer

The Opposer again submits that no further extensions of time should be made available to Applicant. Applicant has had seven months to prepare for filing an Answer

and ample notice of these proceedings and has not shown any good cause for any of the extensions of time. Also, the Board should note that Applicant's counsel, to date, has not once contacted Opposer's counsel or Opposer to seek an extension of time. For purposes of the Board's convenience, the Opposer shall recite a timeline of important events in this proceeding:

5/13/2014 – Applicant fails to properly serve and file a first unconsented Motion for Extension of Time To Answer without good cause.

5/22/2014 – Applicant fails to timely file a second unconsented Motion for Extension of Time to Answer to 6/13/2014 without good cause.

6/13/2014 – Applicants fails to secure consent of Opposer for a third unconsented Motion for Extension of Time to Answer to 6/27/2014 without good cause.

7/7/2014 – Assuming arguendo, Applicant fails to file a fourth unconsented Motion with consent for Extension of Time to Answer beyond 6/27/2014.

Therefore, the Opposer submits that the Board should deny any further Applicant's Requests for Extension of Time to Answer including at least the one filed on 6/13/2014. In light of the Applicant's failure to timely respond to the Notice of Opposition, and no justification for failing to answer in a timely manner having been shown, Opposer respectfully requests that default judgment be entered against Applicant, '031 Application refused registration, rendered unenforceable, and/or restricted, and that the extensions of time be denied.

Respectfully submitted,

BB Pharmaceuticals, Inc. (Opposer)

Date: 7/22/2014

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **REPLY BRIEF IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT FOR FAILURE TO ANSWER and OPPOSITION TO EXTENSION OF TIME** has been served on Applicant's counsel, at the following addresses of record, by first class mail, postage prepaid, this 22nd day of July 2014:

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