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

Proceeding	91216057
Party	Plaintiff MLE Fitness LLC
Correspondence Address	G. Luke Ashley Thompson & Knight LLP 1722 Routh StreetSte. 1500 Dallas, TX 75201 UNITED STATES luke.ashley@tklaw.com
Submission	Motion for Default Judgment
Filer's Name	G. Luke Ashley
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Date	06/06/2014
Attachments	TTABdefaultmtn.pdf(105490 bytes)

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

In the matter of trademark application Serial No. 80634552

Opposition No. 91216057

MLE Fitness LLC

Opposer

v.

4th Trimester Fitness LLC

Applicant

**NOTICE OF RECEIPT OF RETURNED SERVICE COPY AND
MOTION FOR DEFAULT JUDGMENT**

Opposer MLE Fitness LLC files this Notice of Receipt of Returned Service Copy and Motion for Default Judgment, and would show the following:

1. On April 23, 2014, MLE Fitness LLC filed its Notice of Opposition to 4th Trimester Fitness LLC's Application No. 86034552.
2. On April 23, 2014, the Trademark Trial And Appeal Board docketed the Opposition as No. 91216057, and issued a letter addressed to the Opposer and the Applicant acknowledging the filing (the "Docketing Notice"). Among other letter advising the parties of the docketing number, and, among other things, a due date for Applicant 4th Trimester Fitness LLC's answer of June 2, 2014.
3. The Docketing Notice further provided: "Plaintiff must notify the Board when service has been ineffective within 10 days of the date of receipt of a returned service copy or the date on which Plaintiff learns that service has been effective."

4. Plaintiff MLE Fitness LLC hereby provides notice that on May 28, 2014, the paper copy of the Notice of Opposition that was forwarded to Defendant 4th Trimester Fitness LLC at 1135 East Coast Drive, Atlantic Beach, Florida 32233 by certified mail, return receipt requested was returned as “unclaimed.” MLE Fitness LLC, however, believes that 4th Trimester Fitness LLC has actual notice of the opposition because (i) an electronic copy of the Notice of Opposition sent to the e-mail address provided for Application No. 86034552; and (ii) in an April 29, 2014 e-mail to MLE Fitness LLC’s principal, Mary Lauren Eubank, Emily Wannenburg, 4th Trimester Fitness LLC’s principal, expressly acknowledged receiving the Notice of Opposition in communication. Further, the electronic docket for Opposition No. 91216057 does not reflect return of the Board’s Docketing Notice.

5. 37 C.F.R. §2.114 provides: “If no answer is filed within the time set, the petition may be decided as in case of default.” Section 312.01 of the Trademark Trial and Appeal Board Manual of Procedure (3d ed 2013) expressly notes that “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)”

6. Because 4th Trimester Fitness LLC has actual notice of this opposition proceeding, and has failed to answer or otherwise respond by the June 2, 2014 deadline, Plaintiff MLE Fitness LLC moves for entry of a default judgment sustaining its opposition to Application No. 86034552.

By: /s/ G. Luke Ashley
G. Luke Ashley
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Dated: June 6, 2014

ATTORNEY FOR MLE FITNESS LLC

CERTIFICATE OF SERVICE

I hereby certify that on this the 6th day of June 2014 a true and correct copy of the foregoing document has been served on 4th Trimester Fitness LLC by certified mail, return receipt requested and by first class mail addressed as follows:

Emily P. Wannenburg
4th Trimester Fitness LLC
1135 East Coast Drive
Atlantic Beach, Florida 32233

/s/ G. Luke Ashley
G. Luke Ashley