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Filing date: **08/26/2015**

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

Proceeding	91218304
Party	Plaintiff Kosan Kozmetik Sanayi Ve Ticaret Anonim Sirketi
Correspondence Address	P JAY HINES MUNCY GEISSLER OLDS & LOWE PC 4000 LEGATO RD, STE 310 FAIRFAX, VA 22033 UNITED STATES mailroom@mg-ip.com
Submission	Answer to Counterclaim
Filer's Name	P. Jay Hines
Filer's e-mail	mailroom@mg-ip.com
Signature	/pjh/
Date	08/26/2015
Attachments	2015-08-26 Oppower's Response to the Show cause Order and Motion for Leave to Enter its Answer to the Counterclaim out of Time.pdf(836453 bytes )

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

KOSANKOZMETIK SANAYIVETICARET  
ANONIM SIRKETI,

OPPOSER,

v.

MIRJAM ASAM, MARCUS ASAM, and  
AXEL RUTH

APPLICANTS

Opp. No. 91218304

Application Serial No.: 86080166

Mark: FLORA MARE & Design

**OPPOSER'S RESPONSE TO THE SHOW CAUSE ORDER AND MOTION FOR  
LEAVE TO ENTER ITS ANSWER TO THE COUNTERCLAIM OUT OF TIME**

Opposer hereby responds to the order to show cause why judgment should not be entered for failure to timely file the answer to the counterclaim as directed by the Board in its order of July 31, 2015. Said Answer is attached as Exhibit 1.

**BACKGROUND**

The Board Order of July 31, 2015 provided Applicants until August 14, 2015 to file an amended answer and counterclaim. The same order allowed Opposer 15 days from the date on the certificate of service of the amended answer and counterclaim to file an answer to the counterclaim.

Applicants filed and served the amended answer and counterclaim on August 3, 2015. By agreement of the parties in the Discovery Conference held on November 18,

2014, at the request of Applicants' counsel, service was to be by mail with a confirmation copy by email.

As stated in the Declaration of P. Jay Hines attached as Exhibit 2, from August 4, 2015 to August 15, 2015, Opposer's counsel was on vacation in northern Wisconsin without cell or Internet service except when in town 20 miles away. Opposer's counsel checked emails every other day. The printouts attached as Exhibit 3 from counsel's personal email and the firm email do not show any service by email on or around August 3, 2015.

Opposer's counsel was back in the office on August 17, 2015, but the mailed filing was not brought to his attention until after August 18, 2015, the due date for the answer to the counterclaim. Had Applicants' counsel abided by the agreed methods of service, Opposer's counsel would have been aware of the filing while on vacation and could have arranged for a timely answer to the counterclaim.

## **ARGUMENT**

Under the circumstances outlined herein, Opposer maintains that it has shown good cause why judgment should not be entered. The delay in filing was not the result of willful conduct or gross neglect. Further, Opposer's late answer to the counterclaim is not so out of time as to prejudice Applicants. TBMP § 312.02.

## CONCLUSION

For all of the foregoing reasons, Opposer respectfully requests the Board to set aside the Notice of Default and to enter the Answer to the Counterclaim.

Respectfully submitted,

Date: August 26, 2015



P. Jay Hines

Muncy, Geissler, Olds & Lowe P.C.

4000 Legato Road, Suite 310

Fairfax, VA 22033

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Email: [jh@mg-ip.com](mailto:jh@mg-ip.com)

**CERTIFICATE OF SERVICE**

This is to certify that a true copy of the OPPOSER'S RESPONSE TO THE SHOW CAUSE ORDER AND MOTION FOR LEAVE TO ENTER ITS ANSWER TO THE COUNTERCLAIM OUT OF TIME was submitted via ESTTA to the Trademark Trial and Appeal Board and is being sent via email and first class mail, postage prepaid, on August 26, 2015, to:

William C. Wright  
Jason M. Drangel  
Robert L. Epstein  
Epstein Drangel LLP  
60 East 42<sup>nd</sup> Street, Suite 2410  
New York, New York 10165

Date: August 26, 2015

By:   
Jody Sutphin

**Exhibit 1**

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

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Opp. No. 91218304

Application Serial No.: 86080166  
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**OPPOSER'S ANSWER TO APPLICANTS' COUNTERCLAIM**

Opposer, Kosan Kozmetik sanaye Ve Ticaret Anonim Sirketi, hereby answers the Counterclaim against Registration Nos. 4472860 and 4626632 for the marks FLORMAR TUK MALI & Design and FLORMAR, respectively.

Opposer responds as follows:

Opposer denies the allegations in the preamble to the counterclaim.

1. Admitted.
2. Admitted
3. Admitted.
4. Admitted.
5. Denied.
6. Admitted with the explanation that Opposer had at the time of filing and still has a bona fide intent to use the mark in commerce with the United States. The said mark registered

on the basis of Section 44(e) of the Trademark Act on January 28, 2014. Thus said registration is not vulnerable to challenge on the basis of non-use until January 28, 2017.

7. Denied.
8. Admitted.
9. Opposer is unable to admit or deny this compound allegation with respect use "in commerce" unlimited geographically.
10. Denied.
11. Denied.
12. Denied.
13. Denied.
14. Denied.
15. Denied.
16. Denied.
17. Denied.

WHEREFORE, Applicants are not entitled to any of the relief it seeks and Opposer respectfully requests that the counterclaim be dismissed.

RESPECTFULLY SUBMITTED,  
THE OPPOSER  
Kosan Kozmetik Sanayi Ve Ticaret Anonim Sirketi

Dated: August 26, 2015

By:   
P. Jay Hines

Muncy, Geissler, Olds and Lowe, P.C.  
4500 Legato Road, Suite 310  
Fairfax, VA 22033  
Phone: 703-621-7140  
Fax: 703-621-7155  
[jh@mg-ip.com](mailto:jh@mg-ip.com); [mailroom@mg-ip.com](mailto:mailroom@mg-ip.com)

CERTIFICATE OF SERVICE

I certify that the foregoing OPPOSER'S ANSWER TO APPLICANTS' COUNTERCLAIM is being sent via first class mail, confirmation by email, to:

William C. Wright  
Jason M. Drangel  
Robert L. Epstein  
Epstein Drangel LLP  
60 East 42<sup>nd</sup> Street, Suite 2410  
New York, New York 10165

This 26th day of August, 2015.



Jody Sutphin

**Exhibit 2**

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

KOSANKOZMETIK SANAYIVETICARET  
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Opp. No. 91218304

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**DECLARATION OF P. JAY HINES**

I, P. Jay Hines, declare as follows:

1. I am a partner at Muncy, Geissler, Olds & Lowe, P.C., and counsel for Opposer Kosan Kozmetik Sanayi Ve Ticaret Anonim ("Opposer") in this case. The facts set forth in this declaration are based on my personal knowledge and/or on communications related to this opposition proceeding.
2. The Board Order of July 31, 2015 provided Applicants until August 14, 2015 to file an amended answer and counterclaim. The same order allowed Opposer 15 days from the date on the certificate of service on the amended answer and counterclaim to file an answer to the counterclaim.
3. Applicants filed and served the amended answer and counterclaim on August 3, 2015. By agreement of the parties in the Discovery Conference held on

November 18, 2014, at the request of Applicants' counsel, service was to be by mail with a confirmation copy by email.

4. From August 4, 2015 to August 15, 2015, Opposer's counsel was on vacation in northern Wisconsin without cell or Internet service except when in town 20 miles away. Opposer's counsel checked emails every other day. The attached printouts from counsel's personal email and the firm email do not show any service by email.
5. Opposer's counsel was back in the office on August 17, 2015, but the mailed filing was not brought to his attention until after August 18, 2015, the due date for the answer to the counterclaim.
6. Had Applicants' counsel abided by the agreed methods of service, Opposer's counsel would have been aware of the filing while on vacation and could have arranged for a timely answer to the counterclaim.

I declare under the penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct pursuant to 28 U.S.C. § 1746.

Respectfully submitted,

Dated: August 26, 2015

By: 

P. Jay Hines  
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Email: [mailroom@mg-ip.com](mailto:mailroom@mg-ip.com)

**Exhibit 3**

Microsoft Outlook interface showing an email from FirstLaw regarding trademark [EGO] in China. The interface includes a ribbon with 'Home', 'Send/Receive', 'Folder', 'View', and 'Adobe PDF' tabs. The left sidebar shows folders like 'Inbox', 'Deleted Items', and 'Mail'. The main pane displays a list of emails, with the selected one from 'FirstLaw <firstlawserver@gmail.com>' expanded to show the email content.

**Trademark [EGO] has been filed in China (Our ref/F0999-02-001/1467)**

FirstLaw <firstlawserver@gmail.com>

Sent: Tue 8/25/2015 5:14 AM  
To: Mailroom

Dear P. Jay Hines,

This is to inform you that trademark [EGO] has been published on Trademark Official Gazette in China, according to the search result of us. We would like to call your attention that the mentioned trademark is similar to your client's [EGO] (US Trademark no.86321522). It may infringe on your trademark if the mentioned trademark registered successfully in China because of the similarity between them. For preventing the infringement, we would like to remind you that your client could file an opposition against it. The official deadline for filing an opposition is 2015/11/13, and cannot be extended.

Trademark opposition service is currently provided by our firm. We may offer a package at the amount of USD 1,250/per class, (including official fee and service fee) for filing an opposition in China. In order to meet the deadline, please inform us by 2015/10/14 (30 days before the deadline) for our preparation.

You may check the link for related official Gazette: [Detail Information](#)

Please do not hesitate to contact us if you have any questions and we will reply as soon as possible.

We, as a full-service law firm, have 20 years of leading practice in all aspects of intellectual property law and litigations; we offer Trademark application services in China, Taiwan, Hong Kong, and Singapore. For the mutual benefits and long-term cooperative relationship between us, we won't inform your client directly and cause you a disturbance. We enclose the Trademark application quotation in China, Taiwan, Hong Kong, and Singapore for your reference. It will be the first step of our cooperation if your client needs any trademark application services in the mentioned Asia countries.

Click on a photo to see social network updates and email messages from this person.



FirstLaw



Mailroom

Calendar view for August 2015. The calendar shows dates from Sunday to Saturday. A sidebar on the right contains a 'Today' section with 'KOH out: Shay Centella' and a 'Tomorrow' section with 'KOH in: Shay Centella'. Below the calendar is a search bar for 'Type a new task' and a 'Today' section with 'U.S. Trademark Application' and 'Email from the website'.

