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

Proceeding	91229667
Party	Plaintiff Cybernet Entertainment LLC
Correspondence Address	JULIEN SWANSON AUSTIN LAW GROUP 799 CASTRO STREET SAN FRANCISCO, CA 94114 UNITED STATES Email: swanson@austinlawgroup.com
Submission	Motion for Default Judgment
Filer's Name	Julien Swanson
Filer's email	swanson@austinlawgroup.com
Signature	/Julien Swanson/
Date	08/14/2017
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JULIEN SWANSON (SBN 193957)  
AUSTIN LAW GROUP  
799 Castro Street  
San Francisco CA 94114  
[austin@austinlawgroup.com](mailto:austin@austinlawgroup.com)  
[swanson@austinlawgroup.com](mailto:swanson@austinlawgroup.com)

Attorneys for CYBERNET ENTERTAINMENT LLC

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

CYBERNET ENTERTAINMENT, LLC

Plaintiff;

v.

MICHAEL R.RADCLIFF

Defendant.

Opposition No.	91229667
In re App. No:	86700538
For the Mark:	KINK STARTER
App. Filed:	July 22, 2015
Defendant:	MICHAEL R.RADCLIFF
Published:	July 26, 2016

Plaintiff:

Cybernet Entertainment LLC  
799 Castro Street  
San Francisco CA 94114

Defendant:

Michael R.Radcliff  
P.O. Box 70  
Elka Park, New York, 12427

**Represented by:**  
RICHARD M. BLANK  
Richard Mark Blank Esquire  
19 Ledgewood Cmns  
Millwood, New York, 10546-1026

## **PLAINTIFF'S MOTION TO SUSTAIN THE PENDING OPPOSITION ENTER JUDGMENT AGAINST DEFENDANT**

### **Procedural And Factual History**

The above opposition was filed by Cybernet Entertainment LLC (Plaintiff) on August 23, 2016. On that same date, the Trademark Trial and Appeal Board ("TTAB") issued an order setting the deadline to file an answer as **October 2, 2016**.

No answer was filed and on October 12, 2016, a Notice of Default was filed by the TTAB, wherein a thirty-day period was provided for Defendant to show good cause why judgment should not be entered in the case. Defendant failed to timely respond, and instead, on December 2, 2016, Defendant moved to have the default withdrawn, and requested time to appear and answer by January 15, 2017 (without serving Plaintiff the motion).

On March 2, 2017, the TTAB served Plaintiff with the Defendant's December 2 motion and allowed Plaintiff twenty days to file a response. On March 2, 2017, Plaintiff filed an opposition requesting judgment be entered against Defendant.

In an order dated May 18, 2017, the TTAB denied Defendant's motion to discharge the notice of default, but extended the time for Defendant to file an answer until June 9, 2017, providing that *"failing which, because the notice of default has not been discharged, default judgment may be entered against Defendant."* The TTAB warned that *"no further extensions of time to file an answer will be allowed without the written consent of Plaintiff."*

On June 16, 2017, after no answer was filed by Defendant, Plaintiff moved for default Judgment.

On June 19, 2017, Defendant requested an extension to file an answer without the consent of Plaintiff (Defendant's counsel indicated to the Board that he had requested consent from Plaintiff's attorney through email, but no email or other communication requesting consent was or has been received by the undersigned).

On July 31, 2017, despite its earlier order dated May 18, 2017 wherein it held that no further extensions of time would be granted without Plaintiff's consent, Defendant was provided another extension - to August 11, 2017 to file an answer, with the clear caution that *"should Applicant not file an answer by August 11, 2017, default judgment shall be entered against Applicant and the opposition will be sustained."*

No Answer was filed on or before August 11, 2017.

### **Argument**

Pursuant to the provisions of Rule 55, Federal Rules of Civil Procedure, this Board is empowered to and should enter default judgment against the Defendant granting the relief requested in the Plaintiff's opposition. This Board has already determined that if Defendant failed to answer within the time period granted in the *third* extension, which was on August 11, 2017 and has passed, it shall enter judgment in Plaintiff's favor. Indeed, despite having been granted multiple extensions tolling the deadline to file an answer from October 2016 to August 2017, almost 10 months, Defendant has failed to file such an answer or to timely request an extension.

Judgment should be entered in favor of Plaintiff and against Defendant in this matter.

**Conclusion**

Accordingly, Plaintiff requests judgment be entered against Defendant and the opposition proceedings be considered sustained, final and in favor of Plaintiff.

Dated: August 14, 2017

AUSTIN LAW GROUP


By: /Julien Swanson/  
JULIEN SWANSON  
Attorney for CYBERNET  
ENTERTAINMENT LLC

### **CERTIFICATE OF ELECTRONIC SERVICE**

I hereby certify that on August 14, 2017, the following PLAINTIFF'S MOTION TO SUSTAIN THE PENDING OPPOSITION ENTER JUDGMENT AGAINST DEFENDANT for Application Serial No: 86700538 is being served via electronic mail, to the following attorney of record and at the following address:

RICHARD M. BLANK  
rmb@blanklegal.com

Executed this 14<sup>th</sup> day of August, 2017, at San Francisco, California.

By:  \_\_\_\_\_  
Julien Swanson