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

Proceeding	92047546
Party	Plaintiff J & D Brush Co., Inc.
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Submission	Motion for Default Judgment
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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J & D BRUSH CO., INC. :
 :
 : Petitioner, : Cancellation No. 92047546
 :
 : - against - : (Reg. No. 3,020,126)
 :
 : EXPORT DEPOT USA CORP. :
 :
 : Registrant. :
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PETITIONER’S MOTION FOR DEFAULT JUDGMENT

Pursuant to 37 C.F.R. § 2.114 (a), J & D Brush Co., Inc. (“Petitioner” or “J & D”) hereby moves for entry of default judgment on its Petition for Cancellation, filed on May 18, 2007. Export Depot USA Corp. (“Registrant” or “Export Depot”) has failed to file a timely Answer. Accordingly, default judgment should be entered against Registrant and Registrant’s trademark registration no. 3,020,126 for “LUXOR” should be cancelled.

I. Argument

Trademark Rule 2.114 (a) provides that “[i]f no answer is filed within the time set, the petition may be decided as in case of default.” 37 CFR § 2.114(a). A motion for default judgment for failure to answer may be filed by Petitioner, if Registrant fails to file a timely answer. See TMBP 508.

J & D Brush filed a Petition for Cancellation on May 18, 2007, based on Export Depot's non-use / abandonment of the mark LUXOR, J & D's priority of use, likelihood of confusion, and dilution. On May 22, 2007, the Board mailed Notice of Cancellation Proceeding and Trial Dates to Registrant, setting July 2, 2007, as the deadline for filing an Answer (forty days from mailing date of the said Notice).

On June 27, 2007, Registrant filed an Answer through a Canadian attorney, who is ineligible to practice before the Board. Accordingly, Petitioner filed a Motion to Strike Registrant's improper Answer, based on Trademark Rule 2.127(a). The Board granted Petitioner's motion and Registrant's improper Answer was stricken. See Order dated September 19, 2007. In its Order, the Board allowed Registrant thirty days from the mailing date of the Order, to file a proper Answer. Registrant did not file an Answer, which had a due date of October 19, 2007.

Registrant has been delinquent in filing an Answer in this Cancellation proceeding. A review of the record shows that Registrant is receiving its mail at the address on the record, because it initially responded to the Cancellation petition by filing an improper Answer

Pursuant to this Board's Rules of Procedure, Petitioner moves the Board to enter a default judgment against Export Depot USA Corp., and cancel the subject Registration.

II. Conclusion

Export Depot USA Corp. has failed to file a timely Answer to J & D's Petition for Cancellation of Registration No. 3,020,126 ("LUXOR"). Judgment should be entered for Petitioner and the petition for Cancellation should be granted.

Dated: November 5, 2007
New York, New York

/s/
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