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

Proceeding	92050884
Party	Plaintiff Harris Publications, Inc.
Correspondence Address	Oliver R. Chernin McLaughlin & Stern, LLP 260 Madison Avenue New York, NY 10016 UNITED STATES ochernin@mclaughlinstern.com
Submission	Motion for Default Judgment
Filer's Name	Oliver R. Chernin
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Date	08/24/2009
Attachments	Motion for Default Judgment.pdf (6 pages)(447588 bytes)

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

Harris Publications, Inc.	:
	:Registration No.: 3,123,791
Petitioner	:Mark: **XXL (stylized)**
v.	:Registered: August 1, 2006
	:
AB SAT	:
	:
Respondent	: Cancellation No.92050884

MOTION FOR DEFAULT JUDGMENT

August 24, 2009

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Sir:

Petitioner Harris Publications, Inc., (hereinafter "Petitioner") hereby moves the Trial and Appeal Board (hereinafter the "Board") to enter default judgment against Respondent AB SAT (hereinafter "Respondent"), in the above-referenced Cancellation Proceeding and to cancel Respondent's Registration No. 3,123,791. The basis for Petitioner's Motion is that Respondent has failed to file a timely Answer to the Petition for Cancellation.

HISTORY OF THE PROCEEDING AND RELEVANT FACTS:

On April 30, 2009, Petitioner filed a Petition to Cancel Registration No. 3,123,791 with the Board, properly serving Stewart J. Bellus, Esq., of the law firm Collard & Roe, P.C., Respondent's designated domestic representative and attorney of record.. The Board instituted the Cancellation Proceeding on the same day, requiring filing of an Answer no later than June 9, 2009.

On June 5, 2009, Aimee L. Kaplan, Esq, an attorney at Collard & Roe, P.C., contacted the undersigned by e-mail correspondence proposing a possible resolution of the Cancellation Proceeding and requesting a 60 day extension to Answer the Petition for Cancellation.

On the same date Ms. Kaplan and the undersigned had a telephone discussion concerning the possible resolution of the Cancellation Proceeding. The parties were unable to resolve the Cancellation Proceeding at such time. As further negotiation and client input concerning the possible resolution of the Cancellation Proceeding was required, the undersigned agreed to a 30 day extension for Respondent to file its Answer. The undersigned confirmed this discussion by e-mail correspondence on June 8, 2009.

On June 8, 2009, Respondent's attorneys timely moved for an extension of time, with consent, to extend Respondent's time to file and Answer for 30 days, up to and including July 8, 2009. The Board granted the requested extension of time on June 10, 2009.

On June 24, 2009, Ms. Kaplan again contacted the undersigned by e-mail, proposing a revised resolution of the Cancellation Proceeding and requesting that the proceeding be suspended while the parties continued negotiating a settlement.

On the same date, the undersigned responded to Ms. Kaplan by e-mail, advising that the terms of settlement proposed by Respondent were not acceptable and proposing an alternate resolution. Concerning Respondent's request to suspend the Cancellation Proceeding, the undersigned advised Ms. Kaplan, that as the parties were still negotiating the possible terms of settlement, Petitioner preferred not to suspend the Cancellation Proceeding, but that it was agreeable to a further 30 day extension for Respondent to file its Answer.

On July 7, 2009, Ms. Kaplan acknowledged the undersigned's June 24, 2009 communication by e-mail and forwarded to the undersigned a copy of Respondent's Motion to extend its time to Answer for 30 days. Concerning Petitioner's proposed settlement terms, Ms. Kaplan advised that she had advised her client (the Respondent) of Petitioner's settlement terms and that she would report back to the undersigned shortly.

On the dame date, Respondent's attorneys timely moved for an extension of time, with consent, to extend Respondent's time to Answer for 30 days, up to and including August 7, 2009. The Board granted the requested extension of time on July 11, 2009.

Since July 7, 2009, the undersigned has received no further communications from either Respondent's attorneys or Respondent directly. Moreover, the records of the Board do not show the filing of an Answer, which was due on August 7, 2009, or a request to extend this due date.

LEGAL ARGUMENT:

After a Petition for Cancellation is filed, the Board institutes the proceedings and sets the time for Respondent to answer. 37 CFR §2.113. The time for filing an answer may be extended by stipulation of the parties, approved by the Board. However, in the absence of an approved extension, Respondent must file an Answer by the due date. 37 CFR §2.114(a) provides that "[i]f no answer is filed within the time set, the petition my be decided as in case of default."

In the present proceeding, the Board instituted the proceeding and set an initial date for Respondent to anser the Petition for Cancellation. After Respondent's time to answer was extended twice, on consent, and with approval by the Board, the last due date was August 7, 2009. Respondent did not file an answer by that due date (or since) and has not moved to extend that due date. Moreover, Respondent did not respond to Petitioner's settlement proposal.

When a Respondent fails to file a timely Answer to a Petition for Cancellation, the Board, on its own initiative, may issue a Notice of Default. Alternatively, the Petitioner may move the Board for default judgment (TBMB §§ 312.01, 508.) Petitioner has chosen to avail itself of the latter option.

The applicable standard for determining whether default judgment should be entered against the Respondent, for its failure to file a timely answer to the complaint is the Fed. R. Civ. P. 55(c) standard, which requires that the Respondent show good cause why default judgment should not be entered against it. Based on the present record, Petitioner submits that there does not appear to be any good cause why judgment should not be entered against Respondent. Rather, the record demonstrates that Respondent has chosen not to file an Answer. Moreover, Respondent's failure to respond to Petitioner's last settlement proposal for two months, clearly indicates that Respondent has no interest in resolving the proceeding via such a route.

Under these circumstances, there appears to be no reason to needlessly prolong this proceeding and, accordingly, Petitioner respectfully requests that the Board grant default judgment in favor of Petitioner and cancel Registration No.3,123,791.

Harris Publications, Inc.

By: Oliver Chernin

Oliver R. Chernin
McLaughlin & Stern, LLP
260 Madison Avenue
New York, NY 10016
(212) 448-1100
Attorneys for Petitioner

Dated: August 24, 2009

CERTIFICATE OF SERVICE

I, Oliver R. Chernin, hereby certify that a true and correct copy of the attached MOTION FOR DEFAULT JUDGMENT was mailed by first class mail, postage pre-paid, this 24th day of August, 2009, to registrant AB SAT's designated domestic representative and designated attorney of record, addressed as follows:

Stewart J. Bellus, Esq.
Mary S. Mathew, Esq.
Aimee L. Kaplan, Esq.
Collard & Roe, P.C.
1077 Northern Blvd.
Roslyn NY 11576

Oliver Chernin

Oliver R. Chernin