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

Proceeding	92055382
Party	Plaintiff Tee and Ell Weight Lifting and Exercise Enterprises, 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**

IN THE MATTER OF: TRADEMARK REGISTRATION NO. 4001078 – WEST SIDE MIXED
MARTIAL ARTS

DATE OF REGISTRATION: July 26, 2011

**TEE AND ELL WEIGHT LIFTING AND
EXERCISE ENTERPRISES, INC. d/b/a/
WESTSIDE BARBELL and
LOUIS J. SIMMONS**

Petitioners,

v.

**PAUL THOMAS, d/b/a WEST SIDE
MIXED MARTIAL ARTS,**

Respondent

Cancellation Proc. No. : 92055382

Registration No. 4001078

Motion for Default Judgment

Petitioner, Tee and Ell Weight Lifting and Exercise Enterprises, Inc. d/b/a Westside Barbell, is an Ohio corporation, and by and through undersigned Counsel, respectfully makes this Motion for Default Judgment in the above-captioned case:

1. Petitioners are the owners of the entire right, title and interest in and to the federally-registered WESTSIDE BARBELL trademark, Registration No. 2935689 filed on September 6, 2002, and registered on March 29, 2005, for:

Prerecorded video tapes featuring instruction and training in the field of weightlifting, in International Class 009.

2. Petitioners are the owners of the entire right, title and interest in and to the federally-filed Trademark Application 85474170 for the mark WESTSIDE 4 ATHLETES, filed November 16, 2011 under Section 1(b) of the Trademark Act (15 U.S.C. § 1051(b)).

3. Upon information and belief, Respondent is the owner of U.S. Trademark Registration 4001078 for the mark WEST SIDE MIXED MARTIAL ARTS mark shown in Registration 4001078 as owned by Paul Thomas, d/b/a West Side Mixed Martial Arts, (hereafter “Respondent”) for:

Martial arts instruction; physical fitness instruction in International Class 041.

4. Upon information and belief, Respondent is an individual with an address of 13782 Hollowgreen Dr., Houston, TX 77082.

5. Respondent was not entitled to use or register as a trademark the WEST SIDE MIXED MARTIAL ARTS mark on either June 16, 2010, the date of filing of said registration, or on July 26, 2011, the date of registration, nor is it entitled to do so today.

6. Respondent’s services are closely related to the goods offered by Petitioners under their WESTSIDE BARBELL mark and registration, and are sold to the same class of purchasers, and are marketed and available for sale through the same or similar channels of trade.

7. Respondent’s mark is confusingly similar to Petitioners’ WESTSIDE BARBELL trademark in sound, appearance, connotation, and commercial impression, and is intended to be

used on services that are closely related and competitive with the services covered by Petitioners' WESTSIDE BARBELL mark and registration.

8. Respondent's mark, namely, WEST SIDE MIXED MARTIAL ARTS, so resembles Petitioners' WESTSIDE BARBELL mark as to be likely, when applied to the services of Respondent, to cause confusion or mistake or to deceive persons by creating the erroneous impression that Respondent's goods and services originate with or come from Petitioners, or are authorized, licensed, endorsed, sponsored by, or are connected in some way with Petitioners, and therefore, the registration of Respondent's WEST SIDE MIXED MARTIAL ARTS designation is injurious to Petitioners.

9. Petitioner Louis J. Simmons has been further injured by the refusal of the United States Patent and Trademark Office to register the mark WESTSIDE 4 ATHLETES, for the goods and services of "Providing assistance, personal training and physical fitness consultation to individuals to help them make physical fitness, strength, conditioning, and exercise improvement in their daily living," on the basis of likelihood of confusion with Respondent's mark, under Trademark Act Section 2(d), 15 U.S.C. § 1052(d).

10. A Petition for Cancellation of the mark WEST SIDE MIXED MARTIAL ARTS was filed before this Board on March 22, 2012, and served upon Respondent by mail on that date.

11. On March 27, 2012, this Board Ordered Respondent to file its Answer by May 6, 2012.

12. As no Answer has been filed by Respondent as of today, May 11, 2012, Respondent is in Default under Fed.R.Civ.P. 55(a).

13. Under Fed.R.Civ.P. 55(b), Plaintiff respectfully asks that a Default Judgment be entered against Respondent, and that the Relief requested in the Petition for Cancellation, the cancellation of U.S. Trademark Reg. 4001078; be GRANTED, as well such other and further relief as the Board may deem just and proper.

Dated: May 11, 2012

Respectfully Submitted,

s/Michael J. Gallagher/
David J. Dawsey

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TEE AND ELL WEIGHT LIFTING AND
EXERCISE ENTERPRISES, INC. d/b/a/
WESTSIDE BARBELL and
LOUIS J. SIMMONS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this Motion for Default Judgment was served by first-class mail, postage pre-paid, to Paul Thomas DBA West Side Mixed Martial Arts, 13782 Hollowgreen Drive, Houston, TX 77082 on this 11th day of May, 2012.

s/Michael J. Gallagher/