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Filing date: **06/20/2014**

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

Proceeding	92056154
Party	Defendant World Marketing of America, Inc.
Correspondence Address	JULIE ANN GREGORY MIDDLETON REUTLINGER 401 S FOURTH STREET, SUITE 2600 LOUISVILLE, KY 40202 UNITED STATES jgregory@middletonlaw.com, jray@middletonlaw.com
Submission	Other Motions/Papers
Filer's Name	Julie Gregory Ray
Filer's e-mail	jray@middletonlaw.com
Signature	/Julie Gregory Ray/
Date	06/20/2014
Attachments	Motion to Dismiss 92056154 with Exhibit A.pdf(2056004 bytes )

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

In Re Trademark Reg. No. 3,169,769

Mark:



Filed: 01/25/2005

Registered: 11/07/2006

_____	)	
<b>MCS Central Europe Sp. z.o.o.</b>	)	
	)	
<b>Petitioner</b>	)	<b>Cancellation No. 92056154</b>
<b>v.</b>	)	
	)	
<b>World Marketing of America, Inc.</b>	)	
	)	
<b>Respondent</b>	)	
_____	)	

CERTIFICATE OF TRANSMISSION

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING TRANSMITTED BY ELECTRONIC MAIL TO THE TRADEMARK TRIAL AND APPEAL BOARD, UNITED STATES PATENT AND TRADEMARK OFFICE, THIS 20th DAY OF JUNE, 2014.

\_\_\_\_\_/JULIE GREGORY RAY/\_\_\_\_\_

**MOTION TO DISMISS CANCELLATION NO. 92056154**

Respondent, World Marketing of America, Inc., by counsel, as and for its Motion to Dismiss Cancellation No. 92056154, states as follows:

On September 12, 2012, MCS Central Europe Sp. z.o.o.'s ("Petitioner") filed a Petition to Cancel Reg. No. 3,169,769 for the composite mark DESA INDOOR/OUTDOOR PRODUCTS & DESIGN due to the fact that No. 3,169,769 had been cited against Petitioner's application to register the mark DESA for identical goods (Ser. No. 85/505,748). The sole

ground asserted in the Petition to Cancel the Registered Mark was abandonment of the mark in connection with the goods listed in the registration. On September 13, 2012, the Board issued its scheduling order which outlined the pertinent deadlines for the cancellation procedures.

Respondent filed its Answer to the Petition to Cancel on October 22, 2012. Thereafter, by consented motions to extend filed November 28, 2012 and March 21, 2013, the trial dates were reset by this Board's Order dated May 4, 2013. However, Petitioner never sought any discovery or filed any testimony to support the claim asserted in its Petition for Cancellation.

Petitioner's application Ser. No. 85/505,748 was subsequently published for opposition on January 7, 2014. Respondent filed its Notice of Opposition to Ser. No. 85/505,748 with this Board on May 6, 2014, with Petitioner's Answer due in the opposition proceedings (Opposition No. 91216250) on June 15, 2014. To date, Petitioner has not filed its Answer to the Notice of Opposition. Respondent (as Opposer) has simultaneously this same date filed its Motion for Default Judgment in Opposition No. 91216250 asking this Board to sustain its opposition to Ser. No. 85/505,748 with prejudice to Applicant. A copy of same is attached hereto as Exhibit A.

Respondent submits that Petitioner's failure to Answer the Notice of Opposition to Ser. No. 85/505,748 is but further evidence to justify a dismissal of the cancellation proceedings *with prejudice as to Petitioner* MCS Central Europe, Sp. z.o.o., but *without any adverse judgment to Respondent* World Marketing of America, Inc. Respondent also refers the Board to the Response to Show Cause Order it previously filed on May 12, 2014 within Cancellation No. 92056154 which details the facts and circumstances surrounding this matter, including the Petitioner's transgressions during the underlying proceedings.

**WHEREFORE**, Respondent, World Marketing of America, Inc., prays for an Order of this Board dismissing Cancellation No. 92056154 *with prejudice as to Petitioner* MCS Central Europe, Sp. z.o.o., but *without any judgment adverse to Respondent* World Marketing of America, Inc.

Respectfully submitted,



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Julie G. Ray  
Julia R. McGuffey  
MIDDLETON REUTLINGER  
Suite 2600  
401 S. Fourth Street  
Louisville, Kentucky 40202  
Tel: (502) 584-1135  
Fax: (502) 561-0442  
Email: jray@middletonlaw.com  
Counsel for Respondent  
World Marketing of America, Inc.

Dated: June 20, 2014

**Certificate of Service**

The undersigned hereby certifies that a true and correct copy of this *Motion to Dismiss Cancellation No. 92056154* has been served via US First Class Mail, postage prepaid, on June 20, 2014 to Anne M. Sterba, Fish & Richardson P.C., P.O. Box 1022, Minneapolis, Minnesota 55440-1022, Counsel for Applicant.



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Counsel for Respondent

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

**In the Matter of Pending Application Serial No. 85/505,748**

**Mark: DESA**  
**Filed: December 29, 2011**  
**Published: January 7, 2014**

**WORLD MARKETING OF AMERICA, INC.** )  
 )  
 **Opposer** )  
 )  
 **v.** ) **Opposition No. 91216250**  
 )  
 **MCS CENTRAL EUROPE Sp. z.o.o** )  
 )  
 **Applicant** )

CERTIFICATE OF TRANSMISSION

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING TRANSMITTED BY ELECTRONIC MAIL TO THE TRADEMARK TRIAL AND APPEAL BOARD, UNITED STATES PATENT AND TRADEMARK OFFICE, THIS 20th DAY OF JUNE, 2014.

/JULIE GREGORY RAY/

**MOTION FOR DEFAULT JUDGMENT**

Comes the Opposer, World Marketing of America, Inc., pursuant to Fed. R. Civ. P. 55(a) and 37 C.F.R. 2.106(a), and for its Motion for Default Judgment, states as follows:

Opposer filed its Notice of Opposition with the Trademark Trial and Appeal Board (the "Board") on May 6, 2014, with a service copy to Applicant's counsel at the address provided by Applicant's counsel as identified in the Trademark Status & Document Retrieval ("TSDR")

records of the United States Patent & Trademark Office ("USPTO"). To date, the service copy of the Notice of Opposition has not been returned to the undersigned counsel.

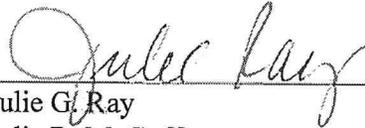
The Board issued its Order and Trial Calendar on May 6, 2014, which set forth the deadline for Applicant to file its Answer to the Notice of Opposition, that being, June 15, 2014.

To date, no Answer has been filed by Applicant and Opposer has received no response from Applicant regarding the Notice of Opposition.<sup>1</sup>

Given Applicant's failure to timely file its Answer, Opposer herein requests the Board enter default judgment against the Applicant with prejudice and sustain the opposition pursuant to Fed. R. Civ. P. 55(a) and 37 C.F.R. 2.106(a). *See also*, TBMP §508.

**WHEREFORE**, Opposer respectfully prays for an Order of this Board entering default judgment sustaining its opposition to Serial No. 85/505,748 with prejudice to Applicant.

Respectfully submitted,



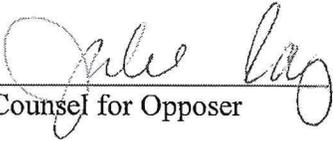
Julie G. Ray  
Julia R. McGuffey  
MIDDLETON REUTLINGER  
Suite 2600  
401 S. Fourth Street,  
Louisville, Kentucky 40202  
Tel: (502) 584-1135  
Fax: (502) 561-0442  
Email: jray@middletonlaw.com  
Counsel for Opposer  
World Marketing of America, Inc.

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<sup>1</sup> Opposer also notes that it has not received any communication or correspondence from Applicant in response to the Response filed by Opposer (as Respondent) to the Show Cause Order in Cancellation No. 92056154 involving the same parties. Opposer (as Respondent) is also filing with the TTAB simultaneously this same date a Motion to Dismiss Cancellation No. 92056154 with prejudice to MCS Central Europe Sp. z.o.o. A copy of same is appended hereto as Exhibit A.

**Certificate of Service**

The undersigned hereby certifies that a true and correct copy of this *Motion for Default Judgment* has been served via US First Class Mail, postage prepaid, on June 20, 2014 to Anne M. Sterba, Fish & Richardson P.C., P.O. Box 1022, Minneapolis, Minnesota 55440-1022, Counsel for Applicant.

  
Counsel for Opposer