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Filing date: **04/11/2014**

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

Proceeding	92058412
Party	Plaintiff Spartan Brands, Inc.
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Submission	Motion for Default Judgment
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Date	04/11/2014
Attachments	Cancellation No. 92058412 - Motion.pdf(355300 bytes)

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

SPARTAN BRANDS, INC.)	
)	
)	Cancellation No. 92058412
Petitioner,)	
)	Registration No. 4,403,243
v.)	
)	Mark: ICEDC
RANDY APPELL,)	
)	Registration Date: September 17, 2013
Respondent.)	
)	

MOTION FOR DEFAULT JUDGMENT FOR FAILURE TO ANSWER

Petitioner, Spartan Brands, Inc. (“Petitioner”) respectfully requests that the Trademark Trial and Appeal Board (“TTAB”) enter a Judgment of Default against Respondent pursuant to Rule 55(a) of the Federal Rules of Civil Procedure (“FRCP”) and Rule 2.106(a) of the Trademark Rules of Practice (“TMRP”) on the grounds that Respondent has failed to file an Answer in this matter.

1. According to FRCP 55(a), “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.”

2. Spartan Brands filed its Petition for Cancellation in this matter on December 19, 2013. A copy was served on Respondent on the same day.

3. The TTAB mailed the Notice of Cancellation and Trial Dates to the Parties on December 20, 2013.

4. On January 27, 2014, Respondent filed a Motion to Extend his time to answer, which was granted by the TTAB in an order mailed to the Parties on March 11, 2014.

Respondent's reason for the extension of time was to "seek legal counsel". (Motion for Extension Without Request).

5. The TTAB's order of March 11th required that the Answer be due by March 28, 2014. The Respondent has not submitted an Answer. There has not been an appearance of counsel for Respondent.

6. Over the course of the past three months, the Parties have engaged in settlement discussions but have been unable to reach a settlement. In an effort to settle this matter, Petitioner's attorneys have left voice mail for Respondent on at least two occasions, with no response from Respondent.

7. Respondent, having failed to file a timely Answer, has conceded the truth of the claims made in the Petition for Cancellation. Therefore, pursuant to FRCP 55(a) and TMRP 2.106(a), Spartan brands respectfully requests that the Trademark Trial and Appeal Board enter a Judgment by Default against Respondent.

Dated: April 11, 2014

Tarter Krinsky & Drogin LLP

By: /s/ Philip Braginsky
Philip Braginsky

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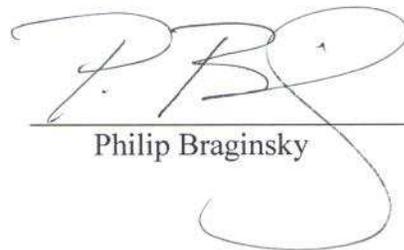
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, a true and correct copy of the foregoing petitioner's Spartan Inc.'s Motion For Default Judgment For Failure To Answer was served on Respondent, by first class mail, postage prepaid, addressed to:

Randy Appell
11 Colgate Lane
Woodbury, New York 11797

Dated: April 11, 2014



Philip Braginsky