

ESTTA Tracking number: **ESTTA594464**

Filing date: **03/25/2014**

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

Proceeding	92058587
Party	Plaintiff Oribe Hair Care, LLC
Correspondence Address	DAVID P GORDON GORDON & JACOBSON PC 60 LONG RIDGE ROAD , SUITE 407 STAMFORD, CT 06902 UNITED STATES dgordon@gordonjacobson.com, davidg@gordonjacobson.com
Submission	Other Motions/Papers
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Date	03/25/2014
Attachments	Cancellation 92058587 Motion for Default Judgment .pdf(149408 bytes)

II. STATEMENT OF FACTS

On Jan. 27, 2014, Plaintiff, Oribe Hair Care, LLC (“Plaintiff”) filed a Petition for Cancellation of Reg. #3,624,082 (“HEAT SHIELD”) and served the same on Defendant, James R. Ward, Jr. The grounds for the Petition for Cancellation included the allegations that the term “heat shield” for hair care products is a generic or merely descriptive term, that the Defendant is not currently using the mark on the goods listed in the registration and has not used the mark on hair care product for at least three years and has abandoned the mark, and that the Defendant had not used the mark in commerce regulated by the U.S. Government at least as early as March 5, 2009.

On Jan. 30, 2014, the United States Patent and Trademark Office Trademark Trial and Appeal Board accepted Plaintiff’s filing of the Petition for Cancellation and issued an Order requiring that Defendant, James R. Ward, Jr. (“Defendant”) file an Answer within forty days after the mailing of the Order (March 11, 2014).

On or about February 24, 2014 the Defendant called the undersigned attorney for Plaintiff by phone asking why Plaintiff was attempting to cancel Defendant’s trademark. The undersigned responded that the grounds for cancelation were set forth in the Petition. Thus, there is no doubt that Defendant is aware of the present proceedings.

As of today’s date, Mar. 25, 2014 which is two weeks after the required date for the Answer, Plaintiff has not been served with Defendant’s answer, and there is no

indication on the Board's ESTTA website that an Answer from Defendant has been filed with the Board.

III. MEMORANDUM OF LAW

37 CFR §2.114(a) states:

If no answer is filed within the time set, the petition may be decided as in case of default.

T.B.M.P. §312.01 states:

If a defendant fails to file an answer to a complaint during the time allowed therefor, the Board may issue a notice of default. The notice states that neither an answer nor any extension of time to answer has been filed; that notice of default under Fed. R. Civ. P. 55(a) is entered; and that defendant is allowed 30 days from the mailing date of the notice in which to show cause why default judgment should not be entered against it...

T.B.M.P. §508 states:

The issue of whether default judgment should be entered against a defendant when it fails to file a timely answer to the complaint may also be raised by means other than the Board's issuance of a notice of default. For example, the plaintiff, realizing that the defendant is in default, may file a motion for default judgment (in which case the motion may serve as a substitute for the Board's issuance of a notice of default)... However the issue is raised, the standard for determining whether default judgment should be entered against the defendant for its failure to file a timely answer to the complaint is the Fed. R. Civ. P. 55(c) standard, which requires that the defendant show good cause why default judgment should not be entered against it. (cites omitted)....

In the present situation, the Board set the date of Mar. 11, 2014 for Defendant's Answer. Plaintiff has waited two weeks beyond the Mar. 11, 2014 for an indication that Defendant has filed Defendant's Answer. Seeing that Defendant's Answer has not been filed, the Plaintiff is entitled to a default judgment.

IV. CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that the Board grant Plaintiff's Motion for Default Judgment against Defendant, and in Plaintiff's favor and cancel U.S. Reg. #3624082.

Dated: Stamford, CT
March 25, 2014

Respectfully submitted,

Gordon & Jacobson, P.C.

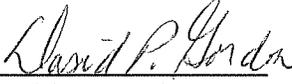
By: David P. Gordon

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **PLANTIFF'S MOTION FOR DEFAULT JUDGMENT** was served on DEFENDANT on March 25, 2014, by depositing it with the United States Postal Service as first class mail in an envelope addressed to:

James R. Ward Jr.
27214 Wells Lane
Conroe, TX 77385


David P. Gordon
David P. Gordon