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Filing date: **09/10/2014**

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

Proceeding	92059659
Party	Plaintiff Financial Gravity, Inc.
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Submission	Motion for Default Judgment
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Date	09/10/2014
Attachments	20140910 Motion for Default Judgment.pdf(710234 bytes)

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

In the matter of Registration No. 3,833,621
Registered: August 17, 2010
Register: Principal
Class: 35

Registration No. 3,833,620
Registered: August 17, 2010
Register: Principal
Class: 35

Registration No. 3,833,646
Registered: August 17, 2010
Register: Principal
Class: 35

Registration No. 3,589,694
Registered: March 17, 2009
Register: Principal
Class 35

FINANCIAL GRAVITY, INC.,	§	
	§	
Petitioner,	§	
	§	
v.	§	Cancellation No. 92059659
	§	Mark: TAX MASTERS, *et al.*
TAXMASTERS, INC.	§	
	§	
Respondent.	§	

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

MOTION FOR DEFAULT JUDGMENT

COMES NOW, the Petitioner, Financial Gravity, Inc., pursuant to 37 C.F.R. § 2.144(a) and FED. R. CIV. P. 55, and moves for entry of default judgment against the Respondent, Tax Masters, Inc. Respondent has failed to file an Answer to the Consolidated Petition for Cancellation during the time allowed and stands in default.

MEMORANDUM OF LAW

I. BACKGROUND.

Petitioner Financial Gravity, Inc. is the owner of the inherently distinctive mark CERTIFIED TAX MASTER for and in connection with "*tax planning, tax systems and tax strategy*" services. Respondent has registered its marks with the United States Patent and Trademark Office (PTO) and is the owner of Registration No. 3,833,621 for the mark TAX MASTERS for "*audit support services, namely, review and analysis of a company's sales, as well as the preparation, organization and presentation of the documents and data requested by a government body, and advice on consultation; income tax preparation; tax advisory services; tax and taxation planning, advice, information and consultancy services; tax consultation; tax lien management services; tax preparation*" in Class 35; Registration No. 3,833,620 for the mark TAXMASTERS for "*audit support services, namely, review and analysis of a company's sales, as well as the preparation, organization and presentation of the documents and data requested by a government body, and advice on government audit processes, policies and strategy; income tax consultation; income tax preparation; tax advisory services; tax and taxation planning, advice, information and consultancy services; tax consultation; tax lien management services; tax preparation*" in Class 35; Registration No. 3,833,646 for the

stylized mark TAX MASTERS for "*audit support services, namely, review and analysis of a company's sales, as well as the preparation, organization and presentation of the documents and data requested by a government body, and advice on government audit processes, policies and strategy; income tax consultation; income tax preparation; tax advisory services; tax and taxation planning, advice, information and consultancy services; tax consultation; tax lien management services; tax preparation*" in Class 35; and, Registration No. 3,589,694 for the stylized mark TAX MASTERS for "*tax consulting, tax preparation, tax advisory services, tax auditing services, tax advocacy services, tax information services, tax consultancy services*" in Class 35 (collectively the "Tax Masters Registrations").

On February 14, 2014, Petitioner filed an application with the PTO for registration of the trademark CERTIFIED TAX MASTER for and in connection with "*tax planning, tax systems and tax strategy services* in International Class 35. On May 27, 2014, PTO Examiner Black Lovelace issued a first, non-final office action in part rejecting Petitioner's application for CERTIFIED TAX MASTER under Section 2(d) in view of the Tax Masters Registrations. On July 17, 2014 Petitioner filed a Consolidated Petition to Cancel the Tax Masters Registrations based on Respondent's bankruptcy and its discontinued use and abandonment of the Tax Masters marks.

On July 22, 2014, the Board mailed a copy of a Notice of Trial dates and Answer Due, stating that an Answer to the Petition for Cancellation was due forty (40) days from mailing date of the order. As forty days from the Board's Order fell on a Sunday, August

31, 2014, and the following Monday was a holiday, the due date for Respondent to file its Answer was September 2, 2014. As of the filing of this Motion, no Answer has been filed by the Respondent, nor has Respondent sought any additional extension of time to file an Answer.

II. DEFAULT JUDGMENT SHOULD BE ENTERED.

Trademark Rule 2.144(a) provides that "If no answer is filed within the time set, the cancellation may be decided as in case of default." 37 C.F.R. § 2.144(a). *See also*, FED. R. CIV. P. 55. Under these rules, "the failure to answer is all that is necessary to support [default] judgment." *Old Grantian Co. v. William Grant & Sons Ltd.*, 150 USPQ 58, 60 (CCPA 1966).

The Respondent that "fails to file a timely answer is in 'default' once the due date for the answer has passed." *Paolo's Assoc. Ltd. V. Bodo*, 21 USPQ2d 1899, 1901 (Comm'r Pat. 1990). In such a case, the Board may issue a Notice of Default, or alternatively, the party in the position of "plaintiff" may move for entry of a default judgment. *Old Grantian*, 150 USPQ at 60.

Respondent has wholly failed to answer, thereby failing to answer within the time set by the Board. Accordingly, Petitioner moves the Board for entry of default judgment against Respondent.

III. CONCLUSION.

In light of the foregoing, Petitioner respectfully requests that default judgment be entered against Respondent in accordance with § 2.144(a) of the Trademark Rules, that this Cancellation be sustained in favor of Petitioner, and that the Board issue an order cancelling U.S. Registration Nos. 3589694, 3833620, 3833621 and 3833646 and for all such other relief, at law and in equity, to which Petitioner may be justly entitled.

Date: September 10, 2014

Respectfully submitted,

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion for Default Judgment was served upon the following parties on September 10, 2014, via first-class United States mail addressed to the Registrant/Respondent as follows:

TaxMasters, Inc.
900 Town and Country Lane, Suite 400
Houston, Texas 77024

Scott L. Harper