

ESTTA Tracking number: **ESTTA687104**

Filing date: **07/31/2015**

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

Proceeding	92060328
Party	Plaintiff L.A. Gem and Jewelry Design, Inc.
Correspondence Address	MILORD A KESHISHIAN MILORD & ASSOCIATES PC 2049 CENTURY PARK EAST, SUITE 3850 LOS ANGELES, CA 90067 UNITED STATES uspto@milordlaw.com
Submission	Motion for Default Judgment
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Date	07/31/2015
Attachments	LAR08-061T Motion to Strike Answer 7-15-15 Final.pdf(23066 bytes )



C.F.R. § 2.106(a), Petitioner moves for a default judgment against the Respondent, on the grounds that it failed to file a conforming Answer during the time allowed therefor.

This motion is based upon the attached brief, the Petition for Cancellation filed by Petitioner on November 5, 2014 (Dkt. No. 1), Respondent's purported answer and amended answer, filed on July 15, 2015 (Dkt. No. 24) and July 21, 2015 (Dkt. No. 25), respectively, and such other argument and evidence as may be presented to the Board on this motion.

## **I. ARGUMENT**

On November 14, 2014, Petitioner filed its Petition for Cancellation of the LOVE IS FOREVER registration for "key rings of precious metal; ornaments, namely, earrings, precious metal insignias, precious metal badges, precious metal medals, tiepins, necklaces, bracelets, pendants, jewelry brooches, medals, rings to wear on finger, medallions; cuff links; clocks and watches, namely, wristwatches, table clocks, watches for carrying in pockets, clocks for vehicles, stop watches, wall clocks, alarm clocks" in International Class 14. Petitioner's claim for relief, in 12 numbered paragraphs, is based upon Registrant's failure to use the LOVE IS FOREVER mark in commerce, or that it completely ceased use of the mark, in connection with the goods identified in the Registration for a period of at least 3 consecutive years. Further, Petitioner has been damaged and will continue to be damaged if the Registered Mark is permitted to remain on the Principal Register because the Registered Mark stands as a bar to Petitioner's ability to federally register and protect its LOVE IS FOREVER mark for its jewelry goods. *See* Petition for Cancellation, Dkt. No. 1.

On February 19, 2015 and March 3, 2015, Respondent, appearing pro se, served an Answer (Dkt. No. 9) and Amended Answer (Dkt. No. 10). Petitioner filed a Motion to Strike

these documents because the Answers failed to provide notice of the claimed defenses and did not state whether the claims of the complaint were admitted or denied. On June 12, 2015, the TTAB granted the Motion and provided Respondent with guidance as to the proper format of the Answer.

On July 11, 2015 and July 21, 2015, Respondent, again appearing pro se, served an Amended Answer to Petition to Cancel and Amendments to that answer. These documents did not cure the defects in the original pleading and are “answers” in name only because they do not permit Petitioner to determine which of its allegations are admitted or denied, or what claims are at issue. For the reasons set forth below, the purported answers should be stricken and default judgment should be entered against Respondent.

**A. RESPONDENT’S PURPORTED ANSWERS SHOULD BE STRICKEN**

Rule 8(b) of the Federal Rules of Civil Procedure provides in pertinent part as follows:

“A party shall state in short and plain terms the party’s defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder.”

Fed. R. Civ. P. 8(b).

Under Rule 8(b), a respondent’s answer must be directly responsive to the Petition for Cancellation; it should not merely contain arguments in the nature of a brief. *See Thrifty Corporation v. Bomax Enterprises*, 228 USPQ 62, 63 (TTAB 1985) (requiring Applicant to refile its answer to Opposer’s notice of opposition because Applicant’s filing lacked a specific response to each averment in the notice of opposition and was “basically argumentative rather

than a proper responsive pleading to the notice of opposition”). The Respondent did not meet this standard because each paragraph of the “Answer” contains bare and conclusory assertions and asserts substantial arguments regarding the merits of the case. Even where Respondent attempted to admit or deny an allegation, the responses are legally insufficient because he also inserted a recitation of events that may or may not have occurred and unfounded arguments that cannot be entered in an attempt to convince the Board why the registration should not be cancelled. Respondent even addresses Petitioner’s attorney directly by stating, “Mr. Milord A. Keshishian, it is highly recommendable for you to respectfully withdraw from this petition to cancel, OBSTRUCTION OF MY BUSINESS, etc.” in response to each paragraph of the “Answer,” which is improper. These assertions still do not provide Petitioner or the Board with fair notice of whether Respondent admits or denies the allegations, nor does it plead the elements necessary to establish the affirmative defenses. As such, these alleged assertions and defenses are not properly pleaded as an answer and affirmative defenses, are not sufficiently founded on rules or case law, and should be stricken.

As set forth above, Respondent’s purported answer is ambiguous, unintelligible, uncertain, legally insufficient and/or improper. Therefore, it is appropriate for it to be stricken.

## **B. DEFAULT JUDGMENT SHOULD BE ENTERED**

Trademark Rule 2.106(a) provides that, “If no answer is filed within the time set, the opposition may be decided as in case of default.” 37 C.F.R. § 2.106(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, 50 (CCPA 1996).

The opposition defendant that “fails to file a timely answer is in ‘default’ once the due

date for the answer has passed.” *Paolo’s Assocs. 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.

The TTAB’s Notice scheduling the trial dates was very plain:

“Strict compliance with the Trademark Rules of Practice and, where applicable, the Federal Rules of Civil Procedure, is required of all parties, whether or not they are represented by counsel.”

Dkt No. 2, p. 6.

The TTAB’s Order granting the prior motion to strike provided Respondent with Pro Se information and guidance as to the format of an appropriate answer and suggested that, “it is advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in a cancellation proceeding to secure the services of an attorney who is familiar with such matters.” Dkt No. 23, p. 6. Further, the same order provided a fair warning to the Respondent. “Failure to file and serve an acceptable answer before the expiration of this period may result in the entry of default judgment against Respondent. Dkt No. 23, p. 5.

The events of the case thus far, constitute a pattern of inability to follow the rules of the TTAB and Federal Rules of Civil Procedure. Based on the entire experience of the case, there is no reason to assume that given additional opportunities that Respondent will fulfill its obligations as a party to the proceedings in the future, which will cause additional delays.

Applicant has failed to file a conforming answer within the time set by the board. Accordingly, a judgment of default should be entered against Respondent.

## II. CONCLUSION

In light of the foregoing, Petitioner respectfully requests that the Motion to Strike be

granted and that Default Judgment be entered against Respondent.

Dated: July 31, 2015

Respectfully submitted,

MILORD & ASSOCIATES, PC

/Milord A. Keshishian/

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on July 31, 2015, I caused a true and correct copy of the foregoing **MOTION TO STRIKE** sent via First Class International Mail, postage prepaid, to Registrant's Correspondence of Record as follows:

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