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

Proceeding	92060901
Party	Plaintiff Cupid Charities, Inc.
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Submission	Response to Board Order/Inquiry
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Signature	/Alexander Garcia/
Date	11/23/2015
Attachments	901.pdf(852219 bytes )

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

CUPID CHARITIES, INC.,

Petitioner,

v.

THE DEW, LLC,

Registrant.

Cancellation No.: 92060901

Amended Notice of Final Determination  
in Civil Action

Mark: UNDIE RUN  
Registration No.: 4615907

**AMENDED NOTICE OF FINAL DETERMINATION  
IN CIVIL ACTION**

Cupid Charities, Inc. (“Petitioner”) hereby submits additional notice to the Trademark Trial and Appeal Board (“Board”) of the final determination of Civil Action No. 1:15-cv-00348-WYD-KLM, *Cupid Charities, Inc. v. The DEW, LLC*, filed in the U.S. District Court for the District of Colorado.

As requested by the Board in its order of November 5, 2015, Petitioner has complied with T.M.E.P. § 1610, providing certified copies according to the procedures outlined therein. Attached as Exhibit A is a copy of the correspondence directed to the Director of the United States Patent and Trademark Office, Office of the Solicitor, as well as the pertinent certified copies provided, namely, “Recommendation of United States Magistrate Judge”, “Order Adopting and Affirming Recommendation of United States Magistrate Judge”, “Default Judgement”, and “Order of Judgment”.

Therefore, Petitioner respectfully requests cancellation of U.S. Registration Nos. 4,615,907, 4,615,908, and 4,133,557.

DATED: November 23, 2015

**PERKINS COIE LLP**

By: 

Amanda Tessar  
Alexander J.A. Garcia  
Elizabeth M. Banzhoff

1900 Sixteenth Street, Suite 1400  
Denver, Colorado 80202-5255  
Telephone: 303.291.2300  
Facsimile: 303.291.2400

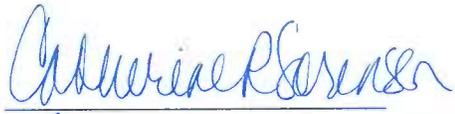
**ATTORNEYS FOR CUPID CHARITIES, INC.**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing **AMENDED NOTICE OF FINAL DETERMINATION IN CIVIL ACTION** and supporting exhibits have been served on The DEW, LLC by mailing said copy on November 23, 2015, via First Class Mail, postage prepaid to:

JOSHUA G GIGGER  
STOEL RIVES LLP  
201 SOUTH MAIN STREET, SUITE 1100  
SALT LAKE CITY, UTAH 84111

By:

  
Catherine R. Sorensen

# Exhibit A

November 23, 2015

Alexander J.A. Garcia  
AJAGarcia@perkinscoie.com  
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Office of the Solicitor  
Mail Stop 8  
Director of the United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

**Re: Cancellation of Registration Nos. 4615907, 4615908, and 4133557**

Dear Director:

Pursuant to T.M.E.P. § 1610, we write to notify the U.S. Patent and Trademark Office that Registration Nos. 4615907, 4615908, and 4133557 have been cancelled by order of the U.S. District Court for the District of Colorado. Enclosed, please find a certified copy of the order cancelling these registrations, as well as other orders from the Court, which are pertinent to Registration Nos. 4615907, 4615908, and 4133557.

These registrations are also subject to the following suspended matters, currently pending before the U.S. Trademark Trial and Appeal Board:

Cancellation No. 92060901

Cancellation No. 92060902

Cancellation No. 92060918

Please contact the undersigned with any questions.

Kind regards,



Alexander J.A. Garcia

AJG:crs

Enclosures: Recommendation of United States Magistrate Judge  
Order Adopting and Affirming Recommendation of United States Magistrate Judge  
Default Judgment  
Order of Judgement

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-00348-WYD-KLM

CUPID CHARITIES, INC.,

Plaintiff,

v.

THE DEW, LLC,

Defendant.

I, the undersigned, Clerk of the  
United States District Court for the  
District of Colorado, do certify that  
the foregoing is a true copy of an  
original document remaining on file  
and record in my office.  
WITNESS my hand and SEAL of said  
Court this 13 day of Nov. 2015  
JEFFREY P. COLWELL  
By  Deputy

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RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

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ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on the **Order to Show Cause** [#34]<sup>1</sup> issued on August 10, 2015. The Order to Show Cause originated in a Minute Order [#33] allowing Attorney Reed W. Morgan, Attorney Marc T. Rasich, and Attorney Joshua G. Gigger to withdraw as counsel for Defendant and Counter Claimant The Dew, LLC ("Defendant Dew"). In the Minute Order, Defendant Dew was warned that a corporation, partnership, or other legal entity "may not appear without counsel admitted to the bar of this court . . . ." D.C.COLO.LAttyR 6. Accordingly, the Court ordered new counsel for Defendant Dew to enter an appearance on or before August 3, 2015. Defendant Dew was warned that "absent prompt appearance of substitute counsel, pleadings and papers may be stricken, and default judgment or other sanctions may be imposed against the entity."

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<sup>1</sup> "[#34]" is an example of the convention the Court uses to identify the docket number assigned to a specific paper by the Court's case management and electronic case filing system (CM/ECF). This convention is used throughout this Order.

D.C.COLO.LAttyR 6. New counsel failed to enter an appearance on behalf of Defendant Dew by August 3, 2015. As a result, the Court issued the present Order to Show Cause, which required Defendant Dew to (1) "show cause why this Court should not recommend that default and default judgment be entered against it based on its lack of counsel in this case," and (2) "show cause why this Court should not recommend that its counterclaims against Plaintiff be dismissed pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute, for failure to comply with Court Orders, and for lack of counsel." [#34] at 2-3. Defendant Dew was warned that "[f]ailure to respond and show good cause for its neglect of this case will result in the Court issuing a recommendation to enter default and default judgment against Defendant Dew and to dismiss Defendant Dew's counterclaims against Plaintiff." *Id.* at 3. The deadline for a response to the Order to Show Cause passed on August 25, 2015. *Id.* Defendant Dew has not filed a response to the Order to Show Cause or anything else on the docket since July 1, 2015, when its now-former counsel sought to withdraw from representation of Defendant Dew. *See Motion* [#30].

To date, new counsel has not entered an appearance on behalf of Defendant Dew. Federal Rule of Civil Procedure 16(f) provides in part: "On motion or on its own, the court may issue any just orders, including those authorized by Rule 37(b)(2)(A)(ii)-(vii), if a party or its attorney . . . (C) fails to obey a scheduling or other pretrial order." Rule 37(b)(2)(A)(ii)-(vii) permits the following sanctions:

(ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence; (iii) striking pleadings in whole or in part; (iv) staying further proceedings until the order is obeyed; (v) dismissing the action or proceeding in whole or in part; (vi) rendering a default judgment against the disobedient party; or (vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

Further, Rule 16(f)(2) provides: "Instead of or in addition to any other sanctions, the court must order the party, its attorney, or both to pay the reasonable expenses—including attorney's fees—incurred because of any noncompliance with this rule, unless the noncompliance was substantially justified or other circumstances make an award of expenses unjust."

In *Big O Tires, LLC v. Black Toad Enters., LLC*, No. 14-cv-00824-RM-MJW, 2014 WL 4638398 (D. Colo. Sept. 17, 2014), an order to show cause was issued regarding a corporate defendant's failure to obtain counsel. Despite this warning, the corporate defendant did not obtain counsel. The assigned magistrate judge thereafter issued a recommendation recommending that default and default judgment enter against the corporate defendant. The recommendation was subsequently adopted by the district judge. Similar circumstances are present in this matter, in that the corporate defendant has been ordered to obtain counsel and yet has failed to do so. Accordingly,

IT IS HEREBY **ORDERED** that the Order to Show Cause [#34] is **MADE ABSOLUTE**.

IT IS FURTHER **RECOMMENDED** that default and default judgment be entered against Defendant Dew based on failure to comply with Court Orders and its lack of counsel in this case. See Fed. R. Civ. P. 37(b)(2)(A)(vi) (permitting sanction of "rendering a default judgment against the disobedient party").

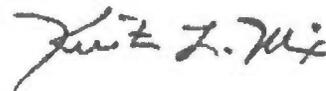
IT IS FURTHER **RECOMMENDED** that the counterclaims against Plaintiff be dismissed pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute, for failure to comply with Court Orders, and for lack of counsel. See Fed. R. Civ. P. 37(b)(2)(A)(v) (permitting

sanction of “dismissing the action or proceeding in whole or in part”); Fed. R. Civ. P. 41(c) (stating that “[t]his rule applies to a dismissal of any counterclaim . . . .”); *Rogers v. Andrus Transp. Servs.*, 502 F.3d 1147, 1151 (10th Cir. 2007) (noting that Court has inherent authority to consider sua sponte whether a case should be involuntarily dismissed due to a party’s failure to prosecute); 9 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2369, at 576-77 & n.1 (3d ed. 2008).

IT IS FURTHER **ORDERED** that pursuant to Fed. R. Civ. P. 72, the parties shall have fourteen (14) days after service of this Recommendation to serve and file any written objections in order to obtain reconsideration by the District Judge to whom this case is assigned. A party’s failure to serve and file specific, written objections waives de novo review of the Recommendation by the District Judge, Fed. R. Civ. P. 72(b); *Thomas v. Arn*, 474 U.S.140, 147-48 (1985), and also waives appellate review of both factual and legal questions. *Makin v. Colo. Dep’t of Corr.*, 183 F.3d 1205, 1210 (10th Cir. 1999); *Talley v. Hesse*, 91 F.3d 1411, 1412-13 (10th Cir. 1996). A party’s objections to this Recommendation must be both timely and specific to preserve an issue for de novo review by the District Court or for appellate review. *United States v. One Parcel of Real Prop.*, 73 F.3d 1057, 1060 (10th Cir. 1996).

Dated: September 3, 2015

BY THE COURT:



Kristen L. Mix  
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Senior Judge Wiley Y. Daniel

Civil Action No. 15-cv-00348-WYD-KLM

CUPID CHARITIES, INC.,

Plaintiff,

v.

The DEW, LLC,

Defendant.

I, the undersigned, Clerk of the United States District Court for the District of Colorado, do certify that the foregoing is a true copy of an original document remaining on file and record in my office.

WITNESS my hand and SEAL of said Court this 13 day of Nov. 2015

JEFFREY P. COLWELL

By [Signature] Deputy

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ORDER ADOPTING AND AFFIRMING RECOMMENDATION OF  
UNITED STATES MAGISTRATE JUDGE

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THIS MATTER is before the Court on the Recommendation of United States Magistrate Judge ("Recommendation"), filed September 3, 2015. (ECF No. 35). In the Recommendation, Magistrate Judge Mix recommends that her previous Order to Show Cause (ECF No. 34) be made absolute and (1) that default and default judgment be entered against Defendant Dew based on failure to comply with Court Orders and its lack of counsel in this case; and (2) that the counterclaims against Plaintiff be dismissed pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute, for failure to comply with Court Orders, and for lack of counsel. (Recommendation at 2-3). The Recommendation is incorporated herein by reference. See 28 U.S.C. § 36(b)(1)(B), Fed. R. Civ. P. 72(b).

Under Fed. R. Civ. P. 72, written objections are due within fourteen (14) days after service of a copy of the Recommendation. Here, no objections were filed to the Recommendation. No objections having been filed, I am vested with discretion to review the Recommendation "under any standard [I] deem[] appropriate." *Summers v. Utah*,

927 F.2d 1165, 1167 (10th Cir. 1991); *see also Thomas v. Arn*, 474 U.S. 140, 150 (1985) (stating that "[i]t does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings"). Nonetheless, though not required to do so, I review the Recommendation to "satisfy [my]self that there is no clear error on the face of the record."<sup>1</sup> See Fed. R. Civ. P. 72(b) Advisory Committee Notes.

Having reviewed the Recommendation, I am satisfied that there is no clear error on the face of the record. I find that Magistrate Judge Mix's Recommendation is thorough, well-reasoned and sound. I agree with Magistrate Judge Mix that that default and default judgment should be entered against Defendant Dew and that the counterclaims against Plaintiff should be dismissed pursuant to Fed. R. Civ. P. 41(b).

Based on the foregoing, it is

ORDERED that the Recommendation of United States Magistrate Judge Mix (ECF No. 35) is **AFFIRMED** and **ADOPTED**. In accordance therewith, it is

ORDERED that the Order to Show Cause (ECF No. 34) is **MADE ABSOLUTE**. Accordingly, default and default judgment shall enter against Defendant Dew based on failure to comply with Court Orders and its lack of counsel in this case. Additionally, the counterclaims against Plaintiff are **DISMISSED** pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute, for failure to comply with Court Orders, and for lack of

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<sup>1</sup> Note, this standard of review is something less than a "clearly erroneous or contrary to law" standard of review, Fed. R. Civ. P. 72(a), which in turn is less than a *de novo* review, Fed. R. Civ. P. 72(b).

counsel.

Dated: September 22, 2015

BY THE COURT:

s/ Wiley Y. Daniel  
Wiley Y. Daniel  
Senior United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-00348-WYD-KLM

CUPID CHARITIES, INC.,

Plaintiff,

v.

The DEW, LLC,

Defendant.

I, the undersigned, Clerk of the United States District Court for the District of Colorado, do certify that the foregoing is a true copy of an original document remaining on file and record in my office.

WITNESS my hand and SEAL of said Court this 13 day of Nov. 2015

JEFFREY B. COLWELL

By 

Deputy

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DEFAULT JUDGMENT

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Pursuant to and in accordance with Fed. R. Civ. P. 58(a) and the Order Adopting and Affirming Recommendation of United States Magistrate Judge, filed on September 22, 2015, by the Honorable Wiley Y. Daniel, Senior United States District Judge, and incorporated herein by reference as if fully set forth, it is hereby

ORDERED that the Recommendation of United States Magistrate Judge Mix [ECF Doc. No. 35] is **AFFIRMED** and **ADOPTED**. It is further

ORDERED that that the Order to Show Cause (ECF No. 34) is MADE ABSOLUTE. Accordingly, default and default judgment shall enter in favor of Plaintiff, Cupid Charities, Inc., and against Defendant, The Dew, LLC, based on failure to comply with Court Orders and its lack of counsel in this case. It is further

ORDERED that the counterclaims against Plaintiff are **DISMISSED** pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute, for failure to comply with Court Orders, and for lack of counsel. It is further

ORDERED that Plaintiff shall have its costs by the filing of a Bill of Costs with the Clerk of this Court within fourteen (14) days of entry of judgment, and pursuant to the procedures set forth in Fed. R. Civ. P. 54(d)(1) and D.C.COLO.LCivR 54.1.

DATED at Denver, Colorado this 22nd day of September, 2015.

FOR THE COURT:

JEFFREY P. COLWELL, CLERK

*1st Robert R. Keech*

Robert R. Keech,  
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-00348-WYD-KLM

CUPID CHARITIES, INC.,

Plaintiff,

v.

The DEW, LLC,

Defendant.

I, the undersigned, Clerk of the  
United States District Court for the  
District of Colorado, do certify that  
the foregoing is a true copy of an  
original document remaining on file  
and record in my office.

WITNESS my hand and SEAL of said  
Court this 13 day of Nov. 2015  
**JEFFREY P. COLWELL**  
By [Signature] Deputy

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ORDER OF JUDGMENT

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THIS MATTER is before the Court on the Expedited Motion for Entry of Order of Judgment (ECF No. 38). By way of background, a default and default judgment has been entered in favor of Cupid Charities and against The DEW on all claims brought by Cupid Charities. (ECF Nos. 36 and 37). Accordingly, I grant the pending motion (ECF No. 38), and order the following relief as requested in Plaintiff's Amended Complaint (ECF No. 11):

- a) Judgment is entered to reflect that Cupid Charities' use of CUPID'S UNLIE RUN (whether or not capitalized) does not violate § 32 of the Lanham Act, 15 U.S.C. § 1114, or constitute trademark infringement under the Lanham Act or the common law of Colorado, of Defendant's marks, U.S. Registration Nos. 4,615, 907, 4,615, 908, and 4,133,557.

- b) Pursuant to § 14 of the Lanham Act, 15 U.S.C. § 1064, and § 39 of the Lanham Act, 15 U.S.C. § 1119, Defendant's marks, U.S. Registration Nos. 4,615, 907, 4,615, 908, and 4,133,557, are cancelled.
- c) Defendant The DEW, its agents, servants, employees, attorneys are enjoined from interfering with, or threatening to interfere with, use of the mark CUPID'S UNDIE RUN (whether or not capitalized) by Cupid Charities or its agents, employees, representatives, sponsors, beneficiaries, licensees, vendors, customers, successors, or assigns, including Cupid Charities' use of CUPID'S UNDIE RUN (whether or not capitalized) in any social media platforms including but not limited to BuzzFeed, Facebook, Twitter, and Instagram.
- d) Defendant The DEW is ordered to cooperate in the reinstatement of Cupid Charities' social media accounts, including but not limited to its accounts with BuzzFeed, Facebook, Twitter, and Instagram.
- e) It is ordered that Defendant has not suffered any harm and is not entitled to damages or other relief under 15 U.S.C. §1117.
- f) Cupid Charities is entitled to damages in an amount to be proven. Cupid Charities shall file a motion for damages not later than 21 days after the date of this order. Upon the Court's resolution of such motion, Judgment as to the amount of damages, attorney fees, and costs will be entered in favor of Plaintiff and against the Defendant.

Dated: September 29, 2015

BY THE COURT:

/s/ Wiley Y. Daniel  
WILEY Y. DANIEL,  
SENIOR UNITED STATES DISTRICT JUDGE