

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

12-02-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #77

UNIVERSITY OF LOUISVILLE,)

Opposer,)

vs.)

MINERVA COLLECTION, INC.,)

Applicant)

OPPOSITION NO. 91152916

MOTION FOR ENTRY OF DEFAULT

Box TTAB NO FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Opposer, UNIVERSITY OF LOUISVILLE (“Opposer”) hereby moves for entry of default against applicant MINERVA COLLECTION, INC. (“Applicant”) in the above-captioned opposition proceeding, on the ground that Applicant has failed to timely file an answer to the Notice of Opposition. Pending determination of this Motion, Opposer further moves that this proceeding be suspended except with respect to matters germane to this Motion. This Motion is made and based on the files and records of this proceeding, 37 C.F.R. §§ 2.106(a) and 2.127(d), Fed.R.Civ.P. 55, and Trademark Board Manual of Procedure §§ 317, 508, and 510.03(a).

FACTS

Opposer filed its Notice of Opposition on August 26, 2002. The Trademark Trial and Appeal Board (the “Board”) issued its Scheduling Order governing this proceeding on

September 20, 2002. Among other things, that Order required that Applicants file an answer to the Notice of Opposition within 40 days of the mailing of the Scheduling Order. Accordingly, Applicants' answer was to be filed no later than October 30, 2002.

As of the date of this Motion, no answer or other responsive pleading has been served upon Opposer. Applicant is therefore in default under the September 20, 2002 Scheduling Order.

ARGUMENT

Where the applicant fails to timely file an answer to the notice of opposition, the Board may determine the proceeding by default. Trademark Rule 2.106(a) provides: "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).

Rule 55(a) of the Federal Rules of Civil Procedure provides:

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.

Here, Applicant was granted until October 30, 2002 in which to respond to the Notice of Opposition. To date, no response has been served upon Opposer's counsel. (See the attached Declaration of Jack A. Wheat) Accordingly, the Board should enter Applicant's default. 37 C.F.R. § 2.106(a); TBMP § 317.01.

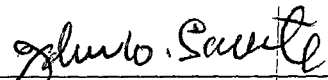
Trademark Rule 2.127(d), 37 C.F.R. § 2.127(d), provides that when any party files a motion that is potentially dispositive of the proceeding, the Board will suspend the proceeding with respect to all matters not germane to the motion, and that the proceeding will be resumed by further order of the Board in the event the proceeding is not resolved by the motion. Because

this motion is potentially dispositive, Opposer requests that this proceeding be so suspended pending determination of the Motion.

CONCLUSION

For the foregoing reasons, Opposer requests that default be entered against Applicant in this proceeding for failure to timely file a response to the Notice of Opposition, that Application Serial No. 76/268976 be denied, and that this proceeding be suspended pending determination of this Motion.

Dated: November 27, 2002



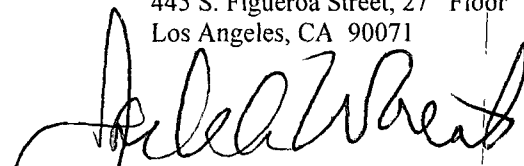
Jack A. Wheat
John W. Scruton
STITES & HARBISON, PLLC
400 West Market Street, Suite 1800
Louisville, Kentucky 40202-3352
(502) 587-3400
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Attorneys for Opposer

CERTIFICATE OF MAILING AND SERVICE

I hereby certify that true copies of this Motion for Entry of Default are being deposited with the U.S. Postal Service, with first class postage prepaid, and addressed as follows, on November 27, 2002:

Box TTAB NO FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513
(original motion)

Shawn S. Namvar
Mobasseri & Namvar, LLP.
445 S. Figueroa Street, 27th Floor
Los Angeles, CA 90071



Jack A. Wheat

DECLARATION OF JACK A. WHEAT

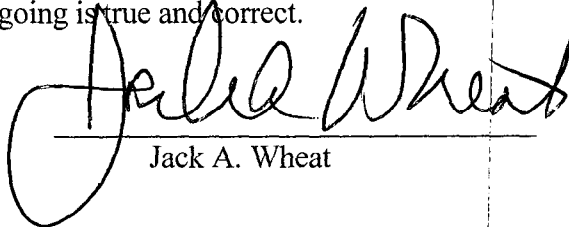
I, Jack A. Wheat, declare as follows:

1. I am an attorney-at-law, licensed to practice before the courts of the states of Kentucky and California, and am of counsel to the firm of Stites & Harbison, counsel of record for Opposer UNIVERSITY OF LOUISVILLE in this matter. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would competently testify thereto.

2. I have not received a copy of an answer or other response to the Notice of Opposition on behalf of Applicant. I have no recollection of having received such a response, and my file of this proceeding contains no response.

I declare under penalty of perjury under the laws of the United States of America and the Commonwealth of Kentucky that the foregoing is true and correct.

Dated: November 1, 2002



Jack A. Wheat

STITES & HARBISON PLLC

ATTORNEYS

November 27, 2002

Box TTAB NO FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

RE: University of Louisville v. Minerva Collection, Inc.,
Opposition No. 91152916

Dear Assistant Commissioner:

Enclosed is Opposer the University of Louisville's Motion for Entry of Default relating to the above-referenced opposition proceeding.

Please call me at the above number if you have questions or need anything further.

Very truly yours,

John W. Scruton

Enclosure

cc: Pete Cautilli (w/ enclosure)

261W:00014:280232:LOUISVILLE

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