

ESTTA Tracking number: **ESTTA4338**

Filing date: **01/05/2004**

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

<b>Proceeding</b>	91155239
<b>Party</b>	Plaintiff Roopak Overseas Pvt, Ltd. Roopak International 6/9 Ajmal Khan Road Karol Bagh INX New Delhi 110 005,
<b>Correspondence Address</b>	MICHAEL W. GARVEY PEARNE & GORDON LLP 526 SUPERIOR AVENUE EAST, SUITE 1200 CLEVELAND, OH 44114-1484
<b>Submission</b>	Motion for Default Judgment
<b>Filer's Name</b>	Michael W. Garvey
<b>Filer's e-mail</b>	mgarvey@pearnegordon.com
<b>Signature</b>	/michaelwgarvey/
<b>Date</b>	01/05/2004
<b>Attachments</b>	MTMC-O1024-Mot. for Default Judg.-v02 (electronic submit)- MWG-BCS.pdf ( 3 pages )

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

Roopak Overseas Pvt. Ltd.,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91155239
	)	Serial No. 76/362,080
	)	
Roopak's Pik-N-Pay, composed of	)	
Mr. Deepak Gulati and Mrs. Neelu Gulati,	)	
	)	
Applicant.	)	

Attention: TTAB  
Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3514

**OPPOSER'S MOTION FOR JUDGMENT BY DEFAULT**

Pursuant to 37 C.F.R. § 2.120(g), the Opposer, Roopak Overseas Pvt. Ltd., moves the Trademark Trial and Appeal Board for a judgment by default in favor of Opposer as a sanction against Applicant for Applicant's failure to comply with the Board's order to compel discovery.

Opposer served Applicant's attorney with Opposer's First Set of Interrogatories to Applicant and Opposer's First Request for Production of Documents and Things to Applicant on June 16, 2003 by First Class Mail. Applicant failed to respond. Opposer made a good faith effort to resolve this issue via a telephone conversation with Applicant's attorney, Charles A. Muserlian, on July 31, 2003, and was unable to reach agreement. Applicant's attorney indicated that his client had not provided instructions for responding and that he did not know if or when they would respond.

Opposer then moved the Board for an order to compel discovery, which was granted on November 19, 2003. Applicant was given thirty days to answer Opposer's discovery requests. Again, Applicant failed to respond. In a telephone conversation on December 29, 2003, Applicant's attorney stated that he still had not received any instructions from Applicant and that it appeared that Applicant had "given up."

Because Applicant has failed to comply with the Board's order and appears to be no longer participating in this action, Opposer now moves the Board for a judgment by default in its favor as a sanction against Applicant for its conduct.

Respectfully submitted,

Roopak Overseas, Pvt. Ltd.

By: /michaelwgarvey/  
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Attorney for Opposer

Date: January 5, 2004

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Opposer's Motion for Judgment by Default was served on Attorney for Applicant as follows by First Class Mail to, Charles A. Muserlian, Attorney for Applicant Roopak's Pik-N-Pay, Muserlian, Lucas and Mercanti, 600 Third Avenue, New York, NY 10016 on this 5th day of January, 2004.

/michaelwgarvey/  
Michael W. Garvey