

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

BLAIR CORPORATION AND	:	
BLAIR HOLDINGS, INC.,	:	
	:	
Opposer,	:	Opposition No. 91157003
	:	
DELMONICO HOLDINGS, LLC,	:	
	:	
Applicant.	:	

03 OCT 23 PM 1:23

APPLICANT'S RESPONSE TO ORDER
TO SHOW CAUSE WHY JUDGMENT BY DEFAULT
SHOULD NOT BE ENTERED

Applicant, DELMONICO HOLDINGS, LLC, in connection with the Notice mailed September 30, 2003, presents the following as just cause why judgment by default should not be entered against it in accordance with Rule 55(b) of the Federal Rules of Civil Procedure. Applicant further requests that it be permitted to file its Answer to Notice of Opposition presented contemporaneously herewith.

On or about March 7, 2002, Applicant filed its application to register the trademark, BLAIR DELMONICO BY DAVID SALVATORE, with the U.S. Patent and Trademark Office. On or about February 4, 2003, the mark was published for opposition in the Official Gazette at Page TM 139.

Opposition No. 91157003

On or about June 3, 2003, Opposers, BLAIR CORPORATION and BLAIR HOLDINGS, INC., filed a Notice of Opposition. The initial Notice of Opposition was never received by the Applicant, or Applicant's General Counsel, Michael P. Barnes. It was not until receipt of the Trademark Trial and Appeal Board's Order to Show Cause dated September 30, 2003, that Applicant first realized that an opposition had been filed against its application.

For the following reasons, a default judgment should not be entered against Applicant in this case.

1. The Trademark Trial and Appeal Board Manual of Procedure (TBMP) instructs that if an Applicant which has failed to file a timely Answer to an Opposition responds to a Notice of Default by filing a satisfactory showing of good cause why default judgment should not be entered against it, the Board will set aside the Notice of Default. See TBMP § 317.02.

"Good cause why default judgment should not be entered against a defendant, for failure to file a timely answer to the complaint, is usually found when the defendant shows that (1) the delay in filing an answer was not the result of willful conduct or gross neglect on the part of the defendant, (2) the plaintiff will not be substantially prejudiced by the delay, and (3) the defendant has a meritorious defense to the action.

Opposition No. 91157003

2. The Board's policy is to decide cases on their merits. "Accordingly, the Board is very reluctant to enter a default judgment for failure to file a timely answer, and tends to resolve any doubt on the matter in favor of the defendant." TBMP § 317.02.

3. Applicant's delay in filing its Answer is not the result of willful conduct or other gross neglect, but rather due to Applicant's unawareness that an Opposition had been filed and presented to the Applicant in the earlier July 11, 2003 Notice. Applicant only became aware of the Opposition when it received the Notice of Default and Order to Show Cause mailed on September 30, 2003.

4. Opposers have not been prejudiced by the brief delay if Applicant is allowed to answer at this time.

5. Applicant maintains that it possesses meritorious defenses to this action. Such defenses include the fact that the term "BLAIR" is a common surname, and, when used as a trademark, is a weak mark frequently adopted and registered by others in a variety of contexts. The attached printout from the TESS Trademark Electronic Search System from the PTO web site lists 115 trademark registrations and applications which contain the term "BLAIR" as a feature thereof. Of these 115 listings, 31 records were found in International Class 25 (clothing). Of the

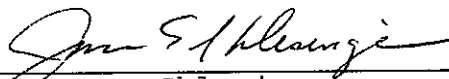
Opposition No. 91157003

31 listings, 13 records are active, several of which are for marks that are not owned by the Opposers. Furthermore, given the differences in the marks and in the goods associated with the respective marks, there is no likelihood of confusion between the marks at issue.

For all of the above referenced reasons, Applicant respectfully requests that a default judgment not issue in this Opposition and that Applicant be permitted to file its Answer herewith.

Respectfully submitted,
DELMONICO HOLDINGS, LLC

Date: October 23, 2003

By: 
James E. Shlesinger
Daniel T. Earle
Attorneys for Applicant

SHLESINGER, ARKWRIGHT &
GARVEY LLP
3000 South Eads Street
Arlington, Virginia 22202
(703) 684-5600

Opposition No. 91157003

CERTIFICATE OF SERVICE

It is hereby certified that this Applicant's Response to Order to Show Cause Why Judgment by Default Should Not Be Entered has been served upon Opposer by mailing a copy thereof by prepaid first class mail to Paul W. Kruze, Counsel for Opposer, Pillsbury Winthrop, LLP, P.O. Box 10500, McLean, Virginia 22102, this 23rd day of October, 2003.

By: 
James E. Shlesinger

nsm



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List At: OR to record: **115 Records(s) found (This page: 1 ~ 100)**

blair[bi,ti]

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Current Search: S1: blair[bi,ti] docs: 115 occ: 133

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1	78233359		BLAIR ESTATE	TARR	LIVE
2	76171469	2772132	BILL BLAIR ADAMS	TARR	LIVE
3	76541910		MALLORY VALERIE BLAIR	TARR	LIVE
4	76464203	2763984	RICHARD L. BLAIR VINEYARDS	TARR	LIVE
5	76379792		BLAIR DELMONICO BY DAVID SALVATORE	TARR	LIVE
6	76370836	2734076	BLAIR Q HEAT	TARR	LIVE
7	76510513		BLAIR COLLEGE	TARR	LIVE
8	76510924		BLAIR DELMONICO	TARR	LIVE
9	76261713		BLAIRWEAR	TARR	DEAD
10	76104009		BLAIR	TARR	DEAD
11	75683089	2607829	GUBLAIR	TARR	LIVE
12	75742724		THE BLAIR WITCH PROJECT	TARR	LIVE
13	75789528		THE BLAIR WITCH PROJECT	TARR	DEAD
14	75028617	2008690	BLAIR	TARR	LIVE
15	75741142	2545706	THE BLAIR WITCH PROJECT	TARR	LIVE
16	75623973		BLAIR.REC	TARR	DEAD
17	75863688	2446012	SKIPPY BLAIR	TARR	LIVE
18	75768226		WILLIAM BLAIR SELECT PARTNERS	TARR	DEAD
19	75687138	2335698	RLB VINEYARDS	TARR	LIVE
20	75667427	2329261	BLAIR TECHNOLOGY GROUP	TARR	LIVE
21	75625190		BLAIR.NOM	TARR	DEAD

22	75625189		BLAIR.ARTS	TARR	DEAD
23	75625185		BLAIR.INFO	TARR	DEAD
24	75625184		BLAIR.WEB	TARR	DEAD
25	75625183		BLAIR.SHOP	TARR	DEAD
26	75625182		BLAIR.FIRM	TARR	DEAD
27	75536104		RHEO BLAIR	TARR	DEAD
28	75502550	2457752	BLAIR WEAR	TARR	LIVE
29	75421688	2247476	BLAIR MILL ADMINISTRATORS	TARR	LIVE
30	75329759	2195424	WILLIAM BLAIR & COMPANY	TARR	LIVE
31	75329758	2195423	WILLIAM BLAIR & COMPANY	TARR	LIVE
32	75319285		BLAIR BARIE	TARR	DEAD
33	75308455		BLAIR SHOPPE.COM	TARR	DEAD
34	75308280		BLAIR.COM	TARR	DEAD
35	75208262		NICKI BLAIR	TARR	DEAD
36	75198089	2351089	BLAIR'S DEATH	TARR	LIVE
37	75097096	2061091	BLAIR	TARR	LIVE
38	75058884	2065961	BLAIR	TARR	LIVE
39	75028027		BLAIR	TARR	DEAD
40	75008109	2134847	BLAIR	TARR	LIVE
41	74254161	1752617	BLAIR	TARR	LIVE
42	74253519	1750194	BLAIR	TARR	LIVE
43	74652365	1968228	BLAIR SHOPPE PREMIER	TARR	DEAD
44	74677682	1964268	JOHN L. BLAIR	TARR	DEAD
45	74644234	1964048	JOHN L. BLAIR	TARR	DEAD
46	74244706	1750515	JOHN F. BLAIR, PUBLISHER	TARR	LIVE
47	74411996	1917415	GLEN BLAIR	TARR	DEAD
48	74714350	1993309	PAINT IT RIGHT PAINT IT JONES BLAIR SINCE 1928	TARR	LIVE
49	74380532	1967589	BLAIR	TARR	LIVE
50	74013171	1626066	BLAIR BOUTIQUE	TARR	LIVE
51	74353894		BONNIE BLAIR	TARR	DEAD
52	74314816	1781924	BLAIR SHOPPE	TARR	LIVE
53	74253524		BLAIRCREST	TARR	DEAD
54	74190910		JENNIFER BLAIR BY NORTHERN ISLES	TARR	DEAD
55	74179906		L.E.BLAIR	TARR	DEAD
56	74105357	1700488	CORBAN & BLAIR	TARR	DEAD
57	74095740		BLAIR INTERACTIVE	TARR	DEAD
58	74062012	1655189	BLAIR SPRAY VAR	TARR	DEAD
59	74053658	1636210	BLAIR-PLUS	TARR	LIVE
60	74031929	1624256	BLAIR	TARR	LIVE
61	73352600	1215010	BLAIR	TARR	DEAD
62	73831172		ALISTAIR BLAIR	TARR	DEAD
63	73804837		ON LINE BLAIR ENTERTAINMENT	TARR	DEAD

64	73788919		ALLISON BLAIR	TARR	DEAD
65	73780989	1563972	BLAIR	TARR	LIVE
66	73695318		JESSICA BLAIR	TARR	DEAD
67	73658670	1542603	BLAIR-SUEDE	TARR	LIVE
68	73653424		ALLISON BLAIR	TARR	DEAD
69	73623843	1439299	KATHRYN BLAIR	TARR	DEAD
70	73575755	1403180	BLAIR MOTION BASSINETTE	TARR	LIVE
71	73569829	1415066	BLAIRSPORT	TARR	DEAD
72	73552497	1429299	LADY BLAIR	TARR	LIVE
73	73515389		LORD BLAIR	TARR	DEAD
74	73509635		THOMPSON-BLAIR	TARR	DEAD
75	73492419	1338286	GLEN BLAIR	TARR	DEAD
76	73450549	1422914	BLAIR	TARR	LIVE
77	73429874	1399094	B BLAIR SATIN TOLE	TARR	LIVE
78	73402356	1283914	BLAIR	TARR	LIVE
79	73400471		BLAIR	TARR	DEAD
80	73393055	1262049	BLAIR	TARR	LIVE
81	73347474	1215208	BLAIR INSERTS	TARR	DEAD
82	73344732	1249396	BLAIR SHOPPER	TARR	LIVE
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87	72381037	0930561	JOHN BLAIR	TARR	LIVE
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90	72096141	0710667	BLAIR HOUSE	TARR	DEAD
91	72124683	0732941	SMITH-BLAIR	TARR	LIVE
92	81021046	1021046	BLAIR & KETCHUM'S COUNTRY JOURNAL	TARR	DEAD
93	72412709	0950536	BFAW BLAIR-FOLLING-ALLEN & WALKER-INC.	TARR	DEAD
94	72379339	0926219	BURTON-BLAIR	TARR	DEAD
95	72362270	0910968	JOHN BLAIR	TARR	LIVE
96	72350209	0952047	JONI BLAIR OF CALIFORNIA	TARR	LIVE
97	72347411	0902648	PETER BLAIR	TARR	DEAD
98	72330004	0893345	BLAIR PRESS	TARR	LIVE
99	72307619	0866884	LORD BLAIR	TARR	DEAD
100	72250357	0846601	BLAIR HOUSE	TARR	DEAD

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106	72190258	0782919	BLAIR HOUSE	TARR	LIVE
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108	72026676	0662018	CHARLES BLAIR	TARR	DEAD
109	71684250	0622013	SMITH BLAIR	TARR	LIVE
110	71653926	0595380	BLAIR	TARR	LIVE
111	71653925	0596554	BLAIR	TARR	LIVE
112	71588651	0574107	BLAIR	TARR	LIVE
113	71536578	0552632	BLAIR'S CERTIFIED	TARR	DEAD
114	71509839	0430542	KEN BLAIR	TARR	DEAD
115	71441290	0403588	BONNIE BLAIR	TARR	DEAD

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4	75742724		THE BLAIR WITCH PROJECT	TARR	LIVE
5	74677682	1964268	JOHN L. BLAIR	TARR	DEAD
6	74013171	1626066	BLAIR BOUTIQUE	TARR	LIVE
7	74353894		BONNIE BLAIR	TARR	DEAD
8	74190910		JENNIFER BLAIR BY NORTHERN ISLES	TARR	DEAD
9	74053658	1636210	BLAIR-PLUS	TARR	LIVE
10	73831172		ALISTAIR BLAIR	TARR	DEAD
11	73788919		ALLISON BLAIR	TARR	DEAD
12	73695318		JESSICA BLAIR	TARR	DEAD
13	73658670	1542603	BLAIR-SUEDE	TARR	LIVE
14	73653424		ALLISON BLAIR	TARR	DEAD
15	73623843	1439299	KATHRYN BLAIR	TARR	DEAD
16	73569829	1415066	BLAIRSPORT	TARR	DEAD
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18	73515389		LORD BLAIR	TARR	DEAD
19	73450549	1422914	BLAIR	TARR	LIVE
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21	72381037	0930561	JOHN BLAIR	TARR	LIVE
22	72379339	0926219	BURTON-BLAIR	TARR	DEAD

23	72362270	0910968	JOHN BLAIR	TARR	LIVE
24	72350209	0952047	JONI BLAIR OF CALIFORNIA	TARR	LIVE
25	72347411	0902648	PETER BLAIR	TARR	DEAD
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27	72307619	0866884	LORD BLAIR	TARR	DEAD
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30	71509839	0430542	KEN BLAIR	TARR	DEAD
31	71441290	0403588	BONNIE BLAIR	TARR	DEAD

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s2 not dead[id]

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3	75742724		THE BLAIR WITCH PROJECT	TARR	LIVE
4	74013171	1626066	BLAIR BOUTIQUE	TARR	LIVE
5	74053658	1636210	BLAIR-PLUS	TARR	LIVE
6	73658670	1542603	BLAIR-SUEDE	TARR	LIVE
7	73552497	1429299	LADY BLAIR	TARR	LIVE
8	73450549	1422914	BLAIR	TARR	LIVE
9	72381037	0930561	JOHN BLAIR	TARR	LIVE
10	72362270	0910968	JOHN BLAIR	TARR	LIVE
11	72350209	0952047	JONI BLAIR OF CALIFORNIA	TARR	LIVE
12	72330004	0893345	BLAIR PRESS	TARR	LIVE
13	72200200	0790047	JOHN BLAIR	TARR	LIVE

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Opposition No. 91157003

FIRST AFFIRMATIVE DEFENSE

There is no likelihood of confusion between the Opposer's marks and Applicant's mark owing to the readily distinguishable differences in sight, sound, meaning, and commercial impressions of the respective marks. Thus, Applicant's mark does not so resemble Opposers' marks so as to be likely to cause confusion, mistake, or deception of purchasers.

Applicant reserves the right to assert additional affirmative defenses to Opposers' allegations as may be warranted by discovery in this matter.

WHEREFORE, Applicant prays that the Opposition be dismissed in its entirety, and that a registration be issued to Applicant for its mark, and that such other and further relief as may be deemed adequate by the Commissioner of Patents and Trademarks be granted.

Opposition No. 91157003

Respectfully submitted,
DELMONICO HOLDINGS, LLC

Date: October 23, 2003

By: James E. Shlesinger
James E. Shlesinger
Daniel T. Earle
Attorneys for Applicant

SHLESINGER, ARKWRIGHT &
GARVEY LLP
3000 South Eads Street
Arlington, Virginia 22202
(703) 684-5600

CERTIFICATE OF SERVICE

It is hereby certified that this Answer to Notice of Opposition has been served upon Opposer by mailing a copy thereof by prepaid first class mail to Paul W. Kruze, Counsel for Opposer, Pillsbury Winthrop, LLP, P.O. Box 10500, McLean, Virginia 22102, this 23rd day of October, 2003.

By: James E. Shlesinger
James E. Shlesinger

nsm

Oct-14-03 02:05P Shlesinger Arkwright & Ga

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

BLAIR CORPORATION AND	:	
BLAIR HOLDINGS, INC.	:	
Opposers,	:	Opposition No. 91157003
v.	:	
DELMONICO HOLDINGS, LLC	:	
Applicant.	:	

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

POWER OF ATTORNEY

Dear Sir:

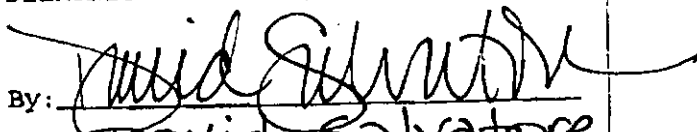
Please recognize James E. Shlesinger, and, Daniel T. Earle, both members of the Bar of the Commonwealth of Virginia, and the firm of SHLESINGER, ARKWRIGHT & GARVEY LLP, 3000 South Eads Street, Arlington, Virginia 22202, as attorneys to prosecute this Opposition proceeding with full power of substitution and revocation, to transact all business before the Trademark Trial and Appeal Board and the U.S. Patent and Trademark Office connected therewith.

Opposition No. 91157003

Please direct all communications in regard to this
Opposition to James E. Shlesinger or Daniel T. Earle at (703)
684-5600.

DELMONICO HOLDINGS, LLC

Date: 10/21/03

By: 
Name: David Salvatore
Title: President

ds

SHLESINGER, ARKWRIGHT & GARVEY LLP

PATENT, TRADEMARK & COPYRIGHT LAW

JAMES E. SHLESINGER
JOSEFINO P. DE LEON
MICHAEL M. ZADROZNY*
TERRENCE L.B. BROWN*
DANIEL T. EARLE

BRIAN J. MARTON
REG. PATENT AGENT

*ADMITTED TO A BAR OTHER THAN VIRGINIA

ESTABLISHED 1950

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TELEPHONE: (703) 684-5600

FAX: (703) 836-5288

FAX: (703) 836-5698

OUR REF. No.

OF COUNSEL
B. EDWARD SHLESINGER, JR.
GEORGE A. ARKWRIGHT
GEORGE A. GARVEY
DONALD C. KOLASCH

October 23, 2003

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

Attention: Ms. Jean Brown
Administrator
Trademark Trial and Appeal Board

Re: Opposition No. 91157003
Blair Corporation and Blair Holdings, Inc.
v. Delmonico Holdings, LLC

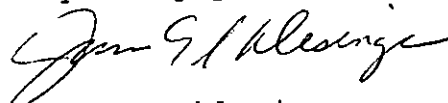
Dear Ms. Brown:

Enclosed for filing in connection with the above-identified opposition are the following:

1. Applicant's Response to Order to Show Cause Why Judgment by Default Should Not Be Entered
2. Answer to Notice of Opposition
3. Power of Attorney

In accordance with the Power of Attorney presented herein, please direct all further communications with regard to the Opposition to the undersigned.

Very truly yours,



James E. Shlesinger
Daniel T. Earle
Attorneys for Applicant
SHLESINGER, ARKWRIGHT & GARVEY LLP
3000 South Eads Street
Arlington, Virginia 22202
(703) 684-5600

JES/nsm

Enclosures

cc: Paul W. Kruze, Esq., Attorney for Opposer

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