Case CHIIN-034M

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

IN RE SERIAL NO. 76/388,253

China Healthways Institute, Inc. dba CHI Institute, Opposer, vs. "Miles" Chong Chen, Ph.D., Applicant.	)	Opposition No. 91157811

APPLICATION FOR DEFAULT JUDGMENT

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

Dear Sir:

In the matter of the above-identified proceeding, as grounds for entry of a Default Judgment, it is alleged as follows:

1. Opposer commenced the above-identified proceeding by filing a Notice of Opposition together with the required fee in the United States Patent and Trademark Office.

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2. Applicant received notification of the opposition proceeding mailed September 23, 2003 from the Trademark Trial and Appeal Board. A duplicate copy of the Notice of Opposition and the notification was also forwarded to Applicant under Trademark Rule of Practice 2.105. To Opposer's knowledge, Applicant's Answer was not returned to the Trademark Office undelivered.

3. Applicant attempted to file its answer on October 29, 2003, but this was rejected by the Board through its Order mailed December 1, 2003. Such Order provided Applicant 30 days within which to file its Answer.

4. On December 31, 2003, Applicant apparently filed a request to extend its time to file its Answer, with no certificate of service. Opposer only learned of this request upon receiving the Board's Notice mailed March 31, 2004. In such Notice, Applicant was allowed until February 29, 2004 to file its Answer. This was the **third** date set for the Applicant to file its answer.

4. To date, Opposer has not received an Answer from the Applicant, as required by the Board's prior orders.

5. Because of Applicant's failure to file an Answer to the Notice of Opposition, Opposer maintains that it is appropriate under Trademark Rule of Practice 2.106(a) and Federal Rule of Civil Procedure 55(b)(2) that a Default Judgment be entered by the Board.

WHEREFORE, Opposer respectfully requests that a Default Judgment be entered and that United States Trademark Application Serial No. 76/388,253 be declared abandoned.

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In the unlikely event that the Board does not enter a default judgment against Applicant, Opposer requests that the discovery and trial dates be reset in view of the Applicant's delay of this proceeding by failing to file its original answer as ordered over 5 months ago.

Respectfully submitted,

Date: 4/8/04 By: _____

Darren S. Rimer
RIMER & MATHEWSON LLP
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(949) 367-1541

Counsel for Opposer

ATTORNEY DOCKET NO.: CHIIN-034M

CERTIFICATE OF MAILING

☒ I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3514 on the date indicated below::

☐ I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10, Express Mail No. _____ on the date indicated below and is addressed to the Assistant Commissioner of Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.

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

on 4/8/07 (Date)

Darren S. Rimer
Signature

DARREN S. RIMER
Typed or printed name of person signing Certificate

Note: Each paper must have its own certificate of mailing, or this certificate must identify each submitted paper.

1. Application for Default Judgment;
2. Transmittal, in triplicate; and
3. Return postcard

TTAB

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April 8, 2004

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

Re: Serial No.: 76/388,253
Opp. No. 91157811
Mark: CHI WELLNESS
Our Reference: CHIIN-034M

Dear Sir/Madam:

Enclosed for filing are the following:

1. Application for Default Judgment;
2. Certificate of Mailing; and
3. A postcard to acknowledge receipt.

This letter is enclosed herewith in triplicate.

Respectfully submitted,

RIMER & MATHEWSON LLP

Date: April 8, 2004 By: _____
Darren S. Rimer
Counsel for Opposer