

ESTTA Tracking number: **ESTTA13417**

Filing date: **08/16/2004**

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

<b>Proceeding</b>	91160416
<b>Party</b>	Plaintiff Russell Asset Management, Inc.  Russell Asset Management, Inc. 300 Delaware Avenue, Suite 1271 Wilmington, DE 19801 UNITED STATES
<b>Correspondence Address</b>	Nathan W Johnson Bradley Arant Rose & White LLP 1819 Fifth Avenue North Birmingham, AL 35203-2104 UNITED STATES
<b>Submission</b>	Motion for Default Judgment
<b>Filer's Name</b>	Nathan W. Johnson, attorney for Opposer
<b>Filer's e-mail</b>	njohnson@bradleyarant.com
<b>Signature</b>	/Nathan W Johnson/
<b>Date</b>	08/16/2004
<b>Attachments</b>	2004-08-16 Motion for Default.pdf ( 4 pages )

Nathan W. Johnson

Direct Dial: 205-521-8369  
Direct Fax: 205-488-6369  
njohnson@bradleyarant.com

16 August 2004

**Filed Via ESTTA**  
Commissioner for Trademarks  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3514

**RE: Opposition Number 91160416**  
**Mark: RATHLETIC JEANS**  
**Applicant: Heo, Jung Man**  
**Opposer: Russell Asset Management, Inc.**

Dear Sirs:

With this letter I have enclosed Motion for Default Judgment regarding Opposition No. 91160416. This Motion is believed to be proper pursuant to the Trademark Rules 37 C.F.R. 2.101*et seq.*

Yours very truly,

  
Nathan W. Johnson

NWJ:rha  
Enclosures

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

<b>Russell Asset Management, Inc.,</b>	)	
	)	<b>Re: Serial No. 78/142,012</b>
<b>Opposer,</b>	)	<b>RATHLETIC JEANS</b>
	)	
<b>v.</b>	)	<b>OPPOSITION NO. <u>91160416</u></b>
	)	
<b>Heo, Jung Man</b>	)	
	)	
<b>Applicant.</b>	)	

**OPPOSER'S  
MOTION FOR DEFAULT JUDGMENT**

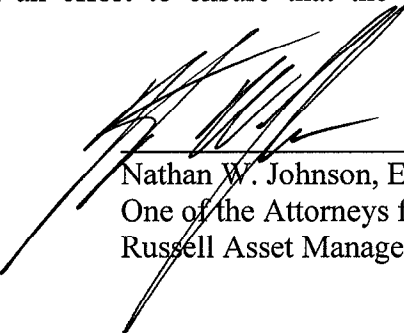
COMES NOW Russell Asset Management, Inc., the Opposer in the above-styled Opposition proceeding, and requests the Trademark Trial and Appeal Board (Board) enter default judgment against Heo, Jung Man, the applicant, for failure to answer or otherwise defend Opposition No. 91160416 regarding application serial number 78/142,012.

On May 5, 2004, Opposer filed a Notice of Opposition with the Board in accordance with 15 U.S.C. 1063 and 37 C.F.R. 2.101 *et seq.* The Opposer received a Scheduling Order from the Board on or about May 10, 2004, stating that an answer to the Notice of Opposition was due forty days from May 6, 2004, the mailing date of the Scheduling Order. By Opposer's calculations, the deadline for answer accordingly expired on June 15, 2004. Applicant failed to answer within the 40 days provided by the Board under 37 C.F.R. 2.113. Opposer understands that the failure to answer Opposition No. 91160416 was not due to a mailing error or an oversight on the part of Applicant. Specifically, following the serving of discovery on Applicant's attorneys of record, Opposer's counsel received a telephone call from Applicant's

attorney on or about June 23, 2004, stating that an answer to the Opposition and responses to discovery would not be forthcoming.

Accordingly, Applicant has been given ample opportunity to answer, apparently intentionally decided not to file an answer in the above referenced Notice of Opposition, and is in default for failure to answer the above referenced Notice of Opposition. Therefore, Opposer moves for an appropriate order entering default judgment in its favor on Opposition No. 91160416.

Opposer notes receipt of the Petition for Leave to Withdraw, filed by the counsel for Applicant on August 5, 2004. Opposer directs service of this Motion to the Applicant's counsel of record in this Opposition, recognizing that the Petition for Leave requests permission to withdraw, but does not purport to effect withdrawal absent the Board's approval. Immediately prior to filing and serving this Motion, the Opposer's counsel have reviewed the Board's electronic TTABVUE database in an effort to ensure that the withdrawal has not yet been approved or entered.

  
Nathan W. Johnson, Esq.  
One of the Attorneys for Opposer  
Russell Asset Management, Inc.

8-16-2004  
Date

OF COUNSEL:  
BRADLEY ARANT ROSE & WHITE LLP  
One Federal Place  
1819 Fifth Avenue North  
Birmingham, Alabama 35203-2104  
205-521-8369 (voice)  
205-488-6369 (facsimile)

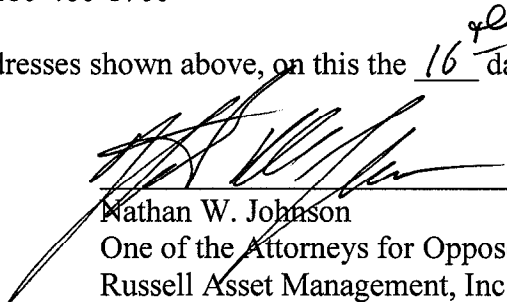
**CERTIFICATE OF SERVICE**

I hereby certify that I have this date served the foregoing Opposer's Motion for Default Judgment regarding Application 78/142,012 for the mark RATHLETIC JEANS, on the following:

John F. Hoffman and Thomas Adams  
Baker & Daniels  
111 E. Wayne Street, Suite 800  
Fort Wayne IN 46802  
Phone Number: 260-424-8000  
Fax Number: 260-460-1700

by deposit in First Class U.S. Mail to the addresses shown above, on this the 16<sup>th</sup> day of August, 2004.

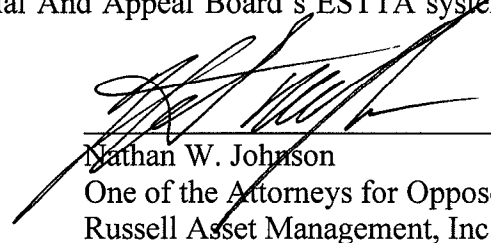
8-16-2004  
Date

  
Nathan W. Johnson  
One of the Attorneys for Opposer,  
Russell Asset Management, Inc.

**CERTIFICATE OF ELECTRONIC FILING VIA ESTTA**

I hereby certify that the three (3) pages of this Motion for Default Judgment (including this certificate page), and the cover letter, are being submitted to the Trademark Trial And Appeal Board electronically using the Trademark Trial And Appeal Board's ESTTA system on August 16, 2004

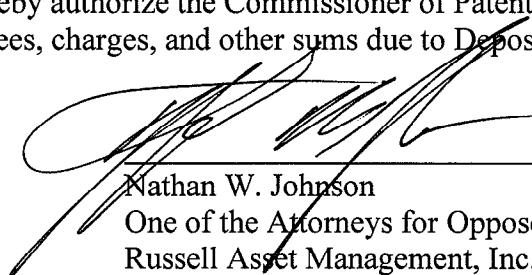
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Date

  
Nathan W. Johnson  
One of the Attorneys for Opposer,  
Russell Asset Management, Inc.

**AUTHORIZATION TO CHARGE  
DEPOSIT ACCOUNT**

If, after processing the enclosed items, any charges, fees, or sums due remain unpaid in connection with this correspondence, I hereby authorize the Commissioner of Patents and Trademarks to charge all such remaining fees, charges, and other sums due to Deposit Account Number 50-0954.

8-16-2004  
Date

  
Nathan W. Johnson  
One of the Attorneys for Opposer,  
Russell Asset Management, Inc.