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Filing date: **08/01/2007**

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

Proceeding	91169106
Party	Plaintiff OS Asset, Inc. and Outback Steakhouse of Florida, Inc.
Correspondence Address	Rosanne T. Yang Baker & Hostetler, LLP Capitol Square, Suite 2100, 65 East State Street Columbus, OH 43215 UNITED STATES ryang@bakerlaw.com
Submission	Reply in Support of Motion
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Signature	/Kristopher J. Armstrong/
Date	08/01/2007
Attachments	OS Asset Reply.pdf ( 8 pages )(258868 bytes )

UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

In The Matter Of Application Serial No. 78/407,551  
Published In The *Official Gazette*, October 11, 2005

OS Asset, Inc. and	)	
Outback Steakhouse of Florida, Inc.	)	Opposition No. 91169106
	)	
Opposers,	)	
	)	
v.	)	
	)	
Ronnie D. Fife	)	
	)	
Applicant.	)	
	)	

**OPPOSERS' REPLY IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT OR, IN  
THE ALTERNATIVE, FOR JUDGMENT ON THE PLEADINGS**

Applicant's response to Opposers' motion for default judgment is not timely and does not show cause why the Board should not enter default judgment in favor of Opposers.

Applicant's Response is untimely because Applicant submitted it more than twenty days after May 15, 2007, the mailing date of Opposers' motion for default judgment. *See* T.B.M.P. § 312.01. Though Applicant stated the date "22.June.07" at the top of his letter, the TTAB did not stamp his response received until July 2. Applicant did not mail it to Opposers until July 14, 2007. *See* Copy of Mailing Envelope and the USPS Tracking Report, attached hereto as Exhibits A and B. June 22, the earliest date mentioned by Applicant, is thirty-eight days after the mailing date of the motion for default. July 2, when the TTAB received the response, is *fifty* days after the motion's mailing date. July 14, when Applicant mailed the response to Opposers, is just shy of *two months* after the motion was mailed to Applicant. Applicant therefore failed to respond within the required twenty days. Though Applicant takes issue with Opposers' service of the

motion, Opposers mailed it to the address listed for Applicant on the electronic docket for this proceeding on the date stated in the certificate. This service meets the requirements of T.B.M.P. § 113.04.<sup>1</sup>

In any event, Applicant's response does not show good cause why default should not be entered. Good cause is generally found where Applicant shows that:

(1) the delay in filing an answer was not the result of willful conduct or gross neglect on the part of the [Applicant], (2) the [Opposer] will not be substantially prejudiced by the delay, and (3) the [Applicant] has a meritorious defense to the action. The showing of a meritorious defense does not require an evaluation of the merits of the case. All that is required is a plausible response to the allegations in the [notice of opposition].

T.B.M.P. § 312.02. Applicant's response shows none of these.

First, Applicant's response does not even discuss the reason for the delay in filing his "answer," let alone show why that delay was not due to his own willful conduct or gross neglect after he disregarded the Board's order to timely file an answer complying with rules that the Board either set out for Applicant verbatim or specifically directed his attention to.

Second, Applicant's response does not discuss prejudice to Opposers, let alone show that Opposers will not be prejudiced by the delay in this proceeding.

Third, Applicant's response does not show that he has a meritorious defense to the action by submitting a plausible response to the allegations in the Notice of Opposition. While Applicant's statement that "the trademark will not cause confusion" may respond to one portion of Paragraph 9 of the Notice of Opposition, Applicant has not presented a plausible response to any of the other paragraphs, including but not limited to Opposers' claim of dilution by Applicant's proposed use or Opposers' statement of ownership of Opposers' marks. (See Notice

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<sup>1</sup> Opposers had no way to know that the different address listed at the end of Applicant's January 9, 2007 filing – to which Applicant drew no specific attention – was his preferred address. Applicant's "old" address is still listed on the Board's docket. However, as a courtesy to Applicant, this Reply will be sent to both of Applicant's addresses.

of Opposition, Doc. No. 1).<sup>2</sup> For this same reason, Applicant's response is not an "answer" under Rule 8(b), and he still has not shown that his January 9, 2007 document is an "answer," or that it was timely filed.

Applicant has, by his own choice, failed to submit a timely answer to Opposers' Notice of Opposition, as the rules governing this proceeding require and as the Board has instructed. Applicant has not shown good cause for failing to follow the rules of procedure and the Board's clear instructions, and he appears to have no intention of ever filing a proper answer to the Notice of Opposition. Under these circumstances, Applicant has failed to show good cause why default should not be entered, or, in the alternative, has admitted all of Opposers' allegations not specifically denied. Accordingly, the Board should enter judgment by default, or, in the alternative, judgment on the pleadings, in favor of Opposers.

Respectfully submitted,



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(614)462-2616 – Facsimile  
Attorneys for OS Asset, Inc. and  
Outback Steakhouse of Florida, Inc.

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<sup>2</sup> Despite his treatise setting forth his view on the history of the work "outback," Applicant does not dispute the validity of Opposers' registered trademarks.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Opposers' Reply in Support Motion for Default Judgment or, In the Alternative, for Judgment on the Pleadings, was served on Applicant this 1st day of August, 2007 by placing it in the United States Mail, postage-prepaid, addressed to:

5000 Chalmer Way, Denair, CA 95316,

and

1449 East "F" St., Suite 101E #216, Oakdale, CA 95361,

and by attaching it to an email addressed to rfife@cali-outback.com, after first sending an e-mail containing no attachments, warning Applicant that an e-mail with this Reply attached was to follow.

  
\_\_\_\_\_  
Kristopher J. Armstrong

**CERTIFICATE OF FILING**

I hereby certify that the foregoing Opposers' Reply in Support of Motion for Default Judgment or, In the Alternative, for Judgment on the Pleadings, was electronically filed this 1st day of August, 2007, through the Electronic System for Trademark Trials and Appeals.

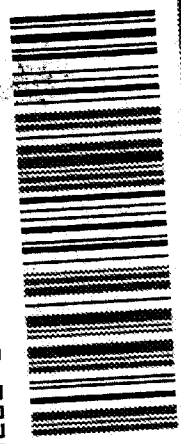
  
\_\_\_\_\_  
Kristopher J. Armstrong

# Exhibit A

Rife  
10 Willowood Dr #33  
Oakdale, CA 95361

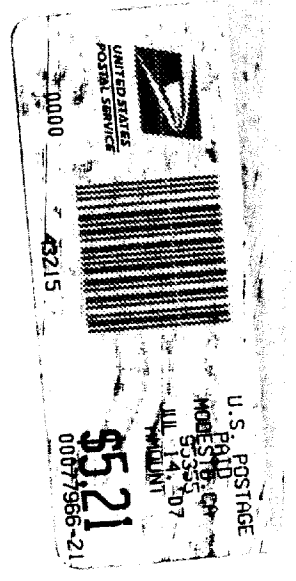
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Address  
Return Receipt  
Required

**CERTIFIED MAIL**



7006 2760 0003 3642 7979

Baker & Hostetler  
Capitol Square, Suite 2100  
65 E State Street  
Columbus, Ohio 43215



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## Exhibit B



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- Acceptance, July 14, 2007, 10:41 am, MODESTO, CA 95355

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