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

Proceeding	91174366
Party	Plaintiff Foreign Threat Assessment Center, Inc. Foreign Threat Assessment Center, Inc. Foreign Threat Assessment Center, Inc. 14855 West 54th Avenue Golden, CO 80403-1217 UNITED STATES
Correspondence Address	Michele B. Fagin Sparks Willson Borges Brandt & Johnson, PC 24 S. Weber Street, Suite 400 Colorado Springs, CO 80903 UNITED STATES mfagin@sparkswillson.com
Submission	Reply in Support of Motion
Filer's Name	Michele B. Fagin
Filer's e-mail	mfagin@sparkswillson.com
Signature	/Michele B. Fagin/
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 78/813,830  
For the Mark SYSTEMA  
Published in the Official Gazette of November 21, 2006

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FOREIGN THREAT ASSESSMENT CENTER, INC.	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91174366
	)	
VALERIE VASILIEV	)	
	)	
Applicant.	)	

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**REPLY BRIEF IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT  
AND MOTION TO STRIKE**

Opposer Foreign Threat Assessment Center, Inc., a Colorado corporation, through its counsel, SPARKS WILLSON BORGES BRANDT & JOHNSON, P.C., respectfully submits this Reply Brief in Support of Motion for Default Judgment and Motion to Strike pursuant to 37 CFR §2.217(a), and Trademark Trial and Appeal Board Manual of Procedure (TBMP) §§502.02(b) and 517.

**Procedural History**

1. On December 4, 2006, Opposer timely filed a Notice of Opposition to Application 78/813,830 for the mark SYSTEMA for “Martial arts instruction; Operating of martial arts’ schools” in International Class 41 (the “Mark”).

2. On December 5, 2006, the Trademark Trial and Appeal Board (the “Board”) issued a Scheduling Order giving the Applicant forty (40) days from the December 5, 2006 mailing date of the Scheduling Order to file her Answer.

3. Forty days from December 5, 2006 fell on January 14, 2007, which day was a Sunday and which was followed by a federal holiday on January 15, 2007 for Martin Luther King, Jr. Day. Applicant's Answer accordingly was due on January 16, 2007.

4. Neither Opposer nor its counsel received an Answer from Applicant and according to the online records of the Board accessible via TTABVUE, no Answer was filed on or before the due date for the Answer.

5. Furthermore, neither Applicant nor any representative of Applicant made any effort to contact counsel or Opposer to request a stipulated extension of time to answer, nor was any motion made to extend time to answer according to the online records of the Board accessible via TTABVUE.

6. On January 25, 2007, Opposer filed a Motion for Default Judgment in which Opposer respectfully requested that the Board enter a default judgment against Applicant with prejudice, that the Opposition be sustained, and that the registration of the Mark be denied.

7. On January 25, 2007, Opposer mailed a copy of the Motion for Default Judgment, together with its supporting Declaration to Applicant. (See Certificate of Process with Opposer's Motion for Default Judgment.)

8. On February 9, 2007, Applicant filed an untitled document with attachments.

9. Neither Opposer or Opposer's counsel has received a copy of the document filed by Applicant from Applicant. To the best of Opposer's knowledge and belief, Applicant did not mail a copy of the untitled document to Opposer or Opposer's counsel. Applicant did not provide a certificate of service with her untitled document indicating that she had mailed any copies to Opposer or Opposer's counsel.

10. On March 5, Opposer's counsel discovered the untitled document while checking the status of Opposer's Motion for Default Judgment at TTABVUE.

### **Time to File Reply Brief**

11. A reply brief to a brief in response is required to be filed within 15 days from the date of service of the brief in response. (TBMP 502.02(b))

12. Since Applicant did not serve Opposer (or claim that she had) or provide any notice that a brief in response had been filed, Opposer respectfully requests that the Board consider this reply brief in support of its original motion notwithstanding the timing of the filing, which is not late, but premature.

### **Reply Brief**

13. If Applicant had responded to Opposer's Motion for Default Judgment, which is acting in this case as the notice of default (TBMP §312.01), by providing a satisfactory showing of good cause why default judgment should not be entered, then the Board should set aside the notice of default. (FRCP 55(c) and TBMP §312.02). If, however, Applicant fails to show good cause, it is within the Board's discretion to enter default judgment in favor of Opposer. (TBMP §312.02)

14. Section 312.02 of the TBMP states that "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 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."

15. Applicant fails as a matter of law to show good cause for its failure to file a timely answer because Applicant's filing does not state any cause for its failure to file a timely answer. There is not on the face of Applicant's filing any mention of any cause for failing to file a timely answer.

16. Applicant fails as a matter of law to show good cause for its failure to file a timely answer because Applicant's filing does not state any basis for Opposer's not being substantially prejudiced by the delay. There is not on the face of Applicant's filing any mention of what prejudice will or will not accrue to Opposer as a result of delay.

17. Applicant fails to show that she has a meritorious defense to the action for the following reasons:

a. Applicant states in her filing that “SYSTEMA means ‘the martial art presented by Vladimir Vasiliev and his teacher in Moscow, Mikhail Ryabko.’” Applicant provides no support for that claim. Applicant does not state how she acquired the rights from Mr. Vasiliev or Mr. Ryabko.

b. Applicant provides a copy of her Canadian trademark registration and mentions that she has also secured registrations in Germany and Switzerland. A foreign registration is not evidence of the use, registrability, of ownership of the subject mark in the United States. (37 CFR §2.122(e))

c. Applicant provides a copy of an article from Black Belt Magazine, which she claims as support for her statement that SYSTEMA is not a generic word. The article is about Vladimir Vasiliev and SYTEMA and contains numerous uses of the word SYSTEMA as a generic word and, on its face, does not support Applicant’s claim that SYSTEMA is not a generic word. For example, the title to the article says: “The Martial Art of Systema Teaches the Ultimate Drills for Stopping Elbows Knees and Head Butts!” The content of “About the Author” includes this statement: “Vladimir Vasiliev is a Toronto-based systema master.”

d. Applicant’s other statements are a series of statements about John Giduck’s contact with Vladimir Vasiliev and a statement about Applicant’s purpose in filing her application, which has no bearing on Opposer’s claims that the word SYSTEMA is a generic word.

18. Even given the relatively low standard for showing of a meritorious defense as provided in the TBMP, Applicant has failed to provide any evidence that she has any defense other than the mere statement that the mark SYSTEMA is not a generic word.

### **Motion to Strike**

19. If a brief in opposition to a motion is not timely filed, it may be stricken or given no consideration, by the Board. (TBMP 517)

20. While Applicant’s filing was made within 20 days of Opposer’s sending its Motion for Default Judgment, since Applicant failed to provide a copy to Opposer or Opposer’s counsel,

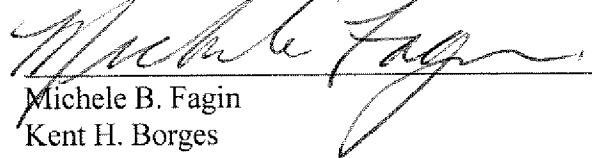
which action Applicant is not even claiming in her filing, it should be stricken or given no consideration by the Board.

21. In the alternative, since Applicant's filing appears on its face to be solely an answer to the opposition and fails to contain any cause or response to Opposer's motion, it may be that it is merely an answer. An answer filed after a Notice of Default has been sent may be considered only if good cause is shown for its not being timely filed. Since Applicant has failed as a matter of law to show good cause, the filing, is an answer, should not be considered.

WHEREFORE, Opposer Foreign Threat Assessment Center, Inc. respectfully requests that the Board strike or not consider Applicant's filing in rendering its decision relating to Opposer's motion for default judgment and therefore sustain Opposer's Opposition to Application Serial No. 78/813,830, enter a default judgment against Applicant with prejudice, and deny registration of the mark in Application Serial No. 78/813,830.

Dated this 7<sup>th</sup> day of March, 2007.

Respectfully submitted,  
SPARKS WILLSON BORGES  
BRANDT & JOHNSON, P.C.



Michele B. Fagin  
Kent H. Borges  
Stephen A. Hess  
24 South Weber Street, Suite 400  
Colorado Springs, CO 80903  
Telephone: (719) 634-5700  
Telecopier: (719) 633-8477

Attorneys for Opposer Foreign Threat  
Assessment Center, Inc.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that true and correct copies of the foregoing Opposer's Reply Brief in Support of Motion for Default Judgment and Motion to Strike were served upon the following by depositing same with the United States Postal Service, first class mail, postage prepaid, this 7<sup>th</sup> day of March, 2007 addressed to:

Valerie Vasiliev  
137 Birch Ave.  
Richmond Hill, Ontario L4C6C5  
Canada

  
Michele B. Fagin