

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Butler

Mailed: April 26, 2007

Opposition No. 91174366

**Foreign Threat Assessment Center,
Inc.**

v.

Valerie Vasiliev

In accordance with the institution order dated December 5, 2006, applicant's (Valerie Vasiliev) answer was due January 14, 2007. On January 25, 2007, opposer (Foreign Threat Assessment Center, Inc.) filed a motion for entry of default judgment against applicant for applicant's failure to file an answer. Applicant filed a response that appears to be an "informal answer," discussed in more detail later in this order, and opposer replied thereto.¹

Opposer's motion for default judgment

In apparent response to opposer's motion for summary judgment, applicant filed correspondence arguing that the term she seeks to register, SYSTEMA, is not generic for a type of martial arts. In reply, opposer argues that applicant has not shown good cause for failure to file her answer on time. Opposer

¹ Applicant's response was not accompanied by proof of service on opposer as required by Trademark Rule 2.119. The requirement for service is discussed later in this order.

contests each argument made by applicant in her "informal" answer and further seeks to strike such correspondence because it was not served on opposer.

A defendant who fails to file its answer in the time set is in default. See Trademark Rule 2.106(a). The standard for determining whether default judgment should be entered against the defendant for its failure to file a timely answer to the complaint is the Fed. R. Civ. P. 55(c) standard, that is, whether the defendant has shown good cause why default judgment should not be entered against it. See *Paolo's Associates Limited Partnership v. Paolo Bodo*, 21 USPQ2d 1899 (Comm'r 1990); and *Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556 (TTAB 1991).

In the present case, applicant's failure to file a timely answer does not appear to be the result of willful conduct or gross neglect but of misunderstanding of the nature of Board proceedings. Inasmuch as the proceeding is not far advanced, there does not appear to be substantial prejudice to the opposer as a result of applicant's delay; and, by responding, albeit inaccurately and without service to opposer, to opposer's motion for default judgment, applicant has shown she intends to defend the opposition. Moreover, because the law favors deciding cases on their merits, the Board is reluctant to grant judgments of default and tends to resolve all doubts by setting aside default. See *Paolo's Associates, supra*.

In view thereof, opposer's motion for default judgment is denied and technical default is set aside. In addition, opposer's motion to strike applicant's correspondence because it was not served is denied.²

Nonetheless, applicant's "answer" is informal. The Board takes this opportunity to apprise applicant of the nature of this opposition proceeding.

Answering the complaint

Applicant's "answer" is informal because it is argumentative and more in the nature of a brief on the case than a responsive pleading to the notice of opposition.³ As such, it does not comply with Rule 8(b) of the Federal Rules of Civil Procedure, made applicable this proceeding by Trademark Rule 2.116(a).

Fed. R. Civ. P. 8(b) provides, in part:

A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder.

² However, should applicant fail to serve future correspondence, the Board may elect not to consider it.

³ The notice of opposition is the "complaint."

The notice of opposition filed by opposer herein consists of **nine** numbered paragraphs setting forth the basis of opposer's claim of damage. In accordance with Fed. R. Civ. P. 8(b) it is incumbent on applicant to answer the notice of opposition **by admitting or denying** the allegations contained in each paragraph. Ordinarily, a defendant will use the same paragraph numbering format found in the complaint (i.e. nine). If applicant is without sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, she should so state and this will have the effect of a denial.

In view of the foregoing, applicant is allowed until **thirty days** from the "mail date," found at the top of the first page of this order, in which to file (and serve on opposer) an answer which complies with Fed. R. Civ. P. 8.

Service requirement

As noted earlier in this order, Trademark Rules 2.119(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney, and proof of such service must be made before the paper will be considered by the Board. Consequently, copies of all papers which applicant may subsequently file in this proceeding, including its answer to the notice of opposition, must be accompanied by a signed statement indicating the date and manner in which such service was made. The statement, whether attached to or appearing

on the paper when filed, will be accepted as prima facie proof of service.

A suggested format for the certificate of service statement, found at TBMP §113.03 (2nd ed. Rev. 1 March 2004), is set out below:

I hereby certify that a true and complete copy of the foregoing (insert title of submission) has been served on (insert name of opposing counsel or party) by mailing said copy on (insert date of mailing), via First Class Mail, postage prepaid (or insert other appropriate method of delivery) to: (set out name and address of opposing counsel or party).

Representation

It should also be noted that while Patent and Trademark Rule 10.14 permits any person to represent itself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in an opposition proceeding to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney. In addition, as the impartial decision maker, the Board may not provide legal advice.

Electronic Resources

Electronic resources may be found at www.uspto.gov by clicking on the word "Trademarks" and selecting "TTAB." Those resources include: Title 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice; the Trademark Trial and Appeal Board Manual of Procedure (TBMP); a database for viewing and

printing all filings and orders in a proceeding (TTABVUE); and the ability to file motions and appropriate matters electronically (ESTTA).⁴

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel.

Discovery and trial dates are reset as follows:

THE PERIOD FOR DISCOVERY TO CLOSE:	October 23, 2007
30-day testimony period for party in position of plaintiff to close	January 21, 2008
30-day testimony period for party in position of defendant to close:	March 21, 2008
15-day rebuttal testimony period to close:	May 5, 2008

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

***By the Trademark Trial
and Appeal Board***

⁴ The TTABVUE and ESTAA databases may also be accessed from the USPTO's home page under the "eBusiness" banner.