

ESTTA Tracking number: **ESTTA144284**

Filing date: **06/05/2007**

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	Motion for Default Judgment
Filer's Name	Michele B. Fagin
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Signature	/Michele B. Fagin/
Date	06/05/2007
Attachments	007a Second Motion for Default Judgment.pdf (4 pages)(200239 bytes) 008a Declaration of Michele Fagin.pdf (2 pages)(94471 bytes)

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

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

OPPOSER’S SECOND MOTION FOR DEFAULT JUDGMENT

Opposer Foreign Threat Assessment Center, Inc., a Colorado corporation, through its counsel, SPARKS WILLSON BORGES BRANDT & JOHNSON, P.C., respectfully moves the Trademark Trial and Appeal Board for the entry of default judgment pursuant to F.R.C.P. 55(a) and 37 CFR §2.106(a) against Applicant Valerie Vasiliev for Applicant’s failure to file an Answer to the Notice of Opposition.

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. See Declaration of Michele B. Fagin in Support of Opposer’s Second Motion for Default Judgment (“Second Fagin Declaration”) at ¶ 2.
2. On December 5, 2006, the Trademark Trial and Appeal Board issued a Scheduling Order giving Applicant forty (40) days from the December 5, 2006 mailing date of the Scheduling Order to file her Answer. Second Fagin Declaration at ¶ 3.
3. Applicant did not file an Answer by the January 16, 2007 due date. See Second Fagin Declaration at ¶ 4.

4. On January 25, 2007, Opposer filed a Motion for Default Judgment requesting that the Board enter a default judgment against Applicant with prejudice and that the registration of the mark in Application Serial No. 78/813,830 be denied. See ESTTA tracking number ESTTA121474.

5. On February 9, 2007, Applicant filed an “informal answer”. See ESTTA tracking number ESTTA 124345.

6. On March 7, 2007 Opposer filed a Reply Brief in Support of Motion for Default Judgment and Motion to Strike in which Opposer requested that the Board strike or not consider Applicant’s filing and enter a default judgment against Applicant with prejudice. See ESTTA tracking number ESTTA128576.

7. On April 26, 2007, the board issued an order that stated that the “informal answer” filed by Applicant did not comply with Rule 8(b) of the Federal Rules of Civil Procedure because “it is argumentative and more in the nature of a brief on the case than a responsive pleading to the notice of opposition.” See Order of the Trademark Trial and Appeal Board dated April 26, 2007 (“Order”) at page 3.

8. The Order denied Opposer’s motion for default judgment and allowed Applicant thirty days from the date of the Order “in which to file (and serve on opposer) an answer which complies with Fed. R. Civ. P. 8.” See Order at page 4.

9. By its Order, the Board apprised Applicant of the nature of the opposition proceeding and provided Applicant with information about the form and content of an Answer. See Order pages 3-4.

10. Thirty days from the date of the Order was May 26, which was a weekend. Applicant’s answer was accordingly due on Monday, May 28, 2007.

11. As of the date of this motion, the online records of the Board viewable at TTABVUE do not show an Answer filed by Applicant. As of the date of this motion, Opposer has not been served with a copy of an Answer. See Second Fagin Declaration at ¶4.

12. Neither Applicant nor any representative of Applicant has made any effort to contact counsel or Opposer to request a stipulated extension of time to answer, nor has any

motion been made to extend time to answer according to the online records of the Board accessible via TTABVUE. See Second Fagin Declaration at ¶ 5.

13. Since the Board has now apprised Applicant of the requirements for an answer and provided Applicant with information on how to prepare and file an answer, and since the second deadline for filing an Answer has passed, Applicant's failure to file an Answer appears to be the result of willful conduct or gross neglect.

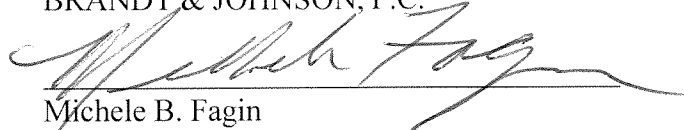
14. The Order stated that "[s]trict compliance with the Trademark Rules of Practice . . . is expected of all parties before the Board, whether or not they are represented by counsel." See Order at page 6.

15. Pursuant to 37 C.F.R. § 2.106(a), if no answer is filed within the time set, the opposition may be decided as in a case of default. The issue of whether default judgment should be entered against an applicant may be raised by motion by an opposer and the motion may serve as a substitute for the Board's issuance of a notice of default. See TBMP 508.

WHEREFORE, Opposer Foreign Threat Assessment Center, Inc. respectfully requests that the Board enter default judgment against Applicant with prejudice that this Opposition be sustained and that registration of the mark in Application Serial No. 78/813,830 be denied.

Dated this 5th day of June, 2007.

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




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CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the foregoing Opposer's Motion for Default Judgment with Declaration of Michele B. Fagin in Support of Opposer's Motion for Default Judgment were served upon the following by depositing same with the United States Postal Service, first class mail, postage prepaid, this 5th day of June, 2007 addressed to:

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

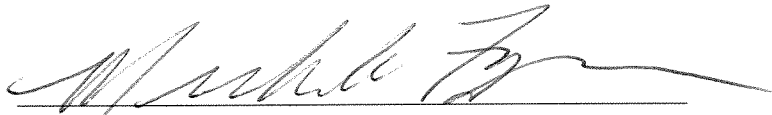

Michele B. Fagin

4. As of the date of this Declaration, neither Opposer nor Opposer's counsel have received an Answer to the Notice of Opposition. According to the online records of the Trademark Trial and Appeal Board accessible via TTABVUE, no Answer that meets the requirements of Fed. R. Civ. P. 8 has been filed as of this date.

5. Furthermore, neither Opposer nor Opposer's counsel have been contacted by Applicant or a representative of Applicant to request a stipulated extension of time to answer, nor has any motion been made to extend time to answer according to the online records of the Board accessible via TTABVUE.

6. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct. I further declare that all statements made herein are made with the knowledge that the making of any willfully false statements and the like is punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and may jeopardize the validity of the application or document or any registration resulting therefrom.

Dated: June 5, 2007.



Michele B. Fagin