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Filing date: **01/04/2008**

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

Proceeding	91177820
Party	Defendant Circuit City Stores West Coast, Inc.
Correspondence Address	BRYAN D. ADAMS KING & SPALDING, LLP. 1100 LOUISIANA ST STE 4000 HOUSTON, TX 77002-5295 badams@kslaw.com, cduval@kslaw.com
Submission	Motion for Default Judgment
Filer's Name	Bryan D. Adams
Filer's e-mail	badams@kslaw.com, cduval@kslaw.com
Signature	/Bryan D. Adams/
Date	01/04/2008
Attachments	Motion for Default Judgment 010208.pdf (7 pages)(71793 bytes)

CERTIFICATE OF MAILING

Date: January 4, 2008

I hereby certify that, on the date indicated above, I deposited this paper or fee with the U.S. Postal Service by first class mail and that it was addressed for delivery to Box TTAB No Fee Commissioner for Trademarks, P.O. Box 1451, Alexandria , Virginia 22313-1451

Name: Bryan D. Adams Signature: Bryan D. Adams

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

LA CITY,	§	
	§	
Opposer,	§	OPPOSITION
	§	
v.	§	NO. 91177820
	§	
CIRCUIT CITY STORES	§	
WEST COAST, INC.	§	
	§	
Applicant.	§	

MOTION FOR DEFAULT JUDGMENT

NOW COMES CIRCUIT CITY STORES WEST COAST, INC. (“Applicant” or “Circuit City”), Applicant for the registration of the mark THE CITY (“Applicant’s Mark”) for “clothing, namely shirts, t-shirts, pullovers, sweaters, sweatshirts, jackets, and coats; headgear, namely caps and hats,” in International Class 25, which mark is the subject of Application Serial No. 77/045,123 (the “Application”), filed on December 15, 2006 and opposed on June 13, 2006 by La City (“Opposer”), and, by and through its undersigned attorney, and, in accordance with 37 C.F.R. § 2.127(a), TBMP §§ 502.04 and Fed. R. Civ. P. 55(a), hereby moves for default judgment against the Opposer regarding the Opposition Proceeding No. 91177820.

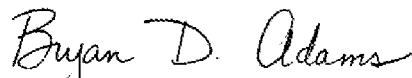
In support of this motion, Applicant respectfully shows that the Opposer failed to prosecute and otherwise pursue this action as provided for by trademark and federal procedural

rules. More specifically, Applicant shows that, the Opposer had 20 (twenty) days from November 20, 2007 to respond to Applicant's Motion to Dismiss (a copy of which is attached hereto as Exhibit A), which was filed on November 20, 2007 and received by Opposer's counsel on or about November 27, 2007 (see attached certified mail return receipt attached as Exhibit B). As of the date of filing of this motion, no response has been received from the Opposer. As set forth under 37 C.F.R. § 2.127(a), when a party fails to file a brief in response to a motion, the Board may treat the motion as conceded. See also TBMP § 502.04 and Fed. R. Civ. P. 55(a).

WHEREFORE, Opposer respectfully requests that a judgment of default be entered against the Opposer with respect to this Opposition proceeding, that the proceeding be dismissed with prejudice and that the Application be allowed to proceed to registration.

Respectfully submitted,

KING & SPALDING LLP



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Attorneys for Applicant
CIRCUIT CITY STORES WEST COAST, INC.

EXHIBIT A: MOTION TO DISMISS

CERTIFICATE OF MAILING

Date: November 20, 2007

I hereby certify that, on the date indicated above, I deposited this paper or fee with the U.S. Postal Service by first class mail and that it was addressed for delivery to Box TTAB No Fee Commissioner for Trademarks, P.O. Box 1451, Alexandria , Virginia 22313-1451

Name: Bryan D. Adams Signature: Bryan D. Adams

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

LA CITY,	§	
	§	
Opposer,	§	OPPOSITION
	§	
v.	§	NO. 91151000
	§	
CIRCUIT CITY STORES	§	
WEST COAST, INC.	§	
	§	
Applicant.	§	

APPLICANT’S MOTION TO DISMISS
OPPOSITION FOR FAILURE TO STATE A CLAIM

NOW COMES CIRCUIT CITY STORES WEST COAST, INC. (“Circuit City” or “Applicant”), the owner of and applicant named in application Serial No. 77/045,123 (the “Application”) for the mark “THE CITY” (“THE CITY” and/or “Applicant’s Mark”), and, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”), 37 C.F.R. Section 2.116 and Section 43 of the Trademark Act of 1946, as amended (hereinafter the “Lanham Act”), 15 U.S.C. § 1051, et seq., respectfully hereby move the Board for entry of an order dismissing the Notice of Opposition filed by La City (“La City” or “Opposer”) on or about June 13, 2007, for failure to state a claim against Applicant upon which relief can be granted..

Rule 12(b)(6) of the Federal Rules of Civil Procedure provides that a claim is subject to dismissal where it fails “to state a claim upon which relief can be granted”. In Opposer’s list of

allegations attached to the Notice of Opposition, Opposer has alleged that Opposer owns a U.S. trademark registration for “LA CITY” and Applicant’s mark is “THE CITY.” Opposer also alleges that there is a likelihood of confusion between Applicant’s mark, “THE CITY,” and “LA CITY” and that the marks are both used on clothing. These are the only allegations listed.

A motion to dismiss for failure to state a claim upon which relief can be granted tests only the legal sufficiency of the complaint, in this case the Notice of Opposition to Circuit City’s trademark application for “THE CITY.” *Advanced Cardiovascular Systems Inc. v. SciMed Life Systems Inc.*, 36 USPQ2d 1038 (Fed. Cir. 1993). To withstand this motion, Opposer’s Notice of Opposition must at the very least allege facts that, if proven, would support that Opposer is entitled to the relief it is seeking. The most basic pleading then requires at least the pleading of facts that allege Opposer’s standing and facts that allege the basis for the petition. *Lipton Industries, Inc. v. Ralston Purina Co.*, 213 USPQ 185 (C.C.P.A. 1982). The Trademark Rules of Practice require that Applicant must set forth a short and plain statement showing why it believes it is damaged by Applicant’s application and must state the grounds of opposition. 37 C.F.R. §2.104(a).

Opposer has pleaded neither. Applicant cannot proceed to the next step of accepting as true the facts pleaded in the Notice of Opposition because Opposer has failed to allege essential facts. Reviewing the facts alleged in Opposer’s Notice of Opposition, Applicant respectfully submits that Opposer has failed to allege that it will be damaged by any alleged likelihood of confusion and therefore Opposer has not alleged that Opposer has standing. In view of Opposer’s limited pleading, the Notice of Opposition must be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and 37 C.F.R. §2.104(a).


WHEREFORE, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Applicant respectfully requests that the Trademark Trial and Appeal Board dismiss, with

prejudice, Opposer's Notice of Opposition on the basis that it fails to state a cause of action upon which relief can be granted.

This 20th day of November, 2007.

Respectfully submitted,

KING & SPALDING

A handwritten signature in cursive script that reads "Bryan D. Adams". The signature is written in black ink and is positioned above a horizontal line.

Bryan D. Adams

Jill A. McWhirter

1100 Louisiana, Suite 4000

Houston, Texas 77002-5213

Telephone: 713-751-3200

Facsimile: 713-751-3290

Attorneys for Applicant

CIRCUIT CITY STORES WEST COAST, INC.

EXHIBIT B: CERTIFIED MAIL RETURN RECEIPT

FOR SERVICE OF MOTION TO DISMISS

UNITED STATES POSTAL SERVICE
FIRST CLASS MAIL
POSTAGE & FEE PAID
USPS
PERMIT NO. 6-30

NOV 27 2007 PM 3:15

* Sender: Please print your name, address, and ZIP+4 in this box *

KING & SPALDING, LLP
ATTN: Bryan D. Adams
1100 Louisiana, Suite 4000
Houston, Texas 77002

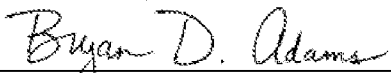
SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<p>1. Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>2. Print your name and address on the reverse so that we can return the card to you.</p> <p>3. Attach this card to the back of the mailpiece, or on the front if space permits.</p>	<p>A. Signature <i>William H. Holt</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) _____ C. Date of Delivery _____</p>
<p>4. Article Addressed to:</p> <p>Mr. William H. Holt Law Office of William H. Holt 12311 Harbor Drive Woodbridge, Virginia 22192</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>5. Article Number (Transfer from service label)</p>	<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input checked="" type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes </p>
<p>Article Number (Transfer from service label) 7004 1160 0007 3021 0697</p>	
<p>PS Form 3811, August 2001</p>	<p>Domestic Return Receipt</p>
<p>102585-02-M-15#</p>	

CERTIFICATE OF SERVICE

This is to certify that I have this day served the foregoing Motion for Default Judgment upon La City, by causing a true and correct copy thereof to be deposited in the United States mail, postage prepaid, addressed to La City's counsel of record as follows:

Mr. William H. Holt
Law Offices of William H. Holt
12311 Harbor Drive
Woodbridge, Virginia 22192

This 4th day of January 2008.



Bryan D. Adams