

ESTTA Tracking number: **ESTTA248491**

Filing date: **11/12/2008**

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

Proceeding	91186028
Party	Plaintiff Quiksilver, Inc.
Correspondence Address	William C. Wright Epstein Drangel Bazerman & James, LLP 60 East 42nd Street, Suite 820 New York, NY 10165 UNITED STATES mail@ipcounselors.com
Submission	Motion for Default Judgment
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Date	11/12/2008
Attachments	DOC111208roxy.pdf (4 pages)(73069 bytes)

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

In the Matter of the Trademark Application for
ROXY COTTON TAIL, Ser. No. 77/298,076, in the name of
Oxy Cottontail, LLC

QUIKSILVER, INC.,)	
)	
Opposer,)	Opp. No. 91186028
)	
v.)	
)	
OXY COTTONTAIL, LLC,)	
)	
Applicant.)	
)	

**OPPOSER’S COMBINED MOTION AND BRIEF
FOR DEFAULT JUDGEMENT UNDER T.B.M.P. 508**

In accordance with TBMP 508, Opposer hereby moves the Board for entry of a default judgment against the Applicant thereby sustaining Opposition No. 91186028 due to Applicant’s failure to answer or otherwise defend the present proceeding.

Applicant has not only failed to timely answer the Notice of Opposition by November 5, 2008, but has also failed to make any attempt whatsoever to extend its time to do so. Accordingly, Opposer respectfully requests that the Board enter a default judgment against Applicant to prevent any further prejudice and undue delay to Opposer in the present *inter parties* proceeding.

In support of this request for entry of default judgment, Opposer alleges as follows:

1. On August 27, 2008, the Board Ordered clearly and unambiguously that an Answer to the Notice of Opposition was due on or before October 6, 2008. Copies of the aforementioned Order were forwarded to Applicant's attorney of record.

2. On or about October 6, 2008, Applicant filed, without Opposer's consent, a thirty (30) day Request for Extension of Time to Answer up to and including November 5, 2008, "so that [it] may engage in settlement negotiations or proposals with [Applicant]." While Opposer does not intend on entertaining any such settlement offers, Applicant has not, in spite of its statement to the contrary, contacted Applicant or its representatives to engage in settlement discussions.

3. The Board has yet to act on Applicant's Request for Extension of Time to Answer. However, even assuming that the Board grants Applicant's aforementioned Request, Applicant has still failed to file, on or before its self imposed deadline of November 5, 2008, a timely Answer, a second Request for an Extension of Time to Answer, or even contact the undersigned to discuss a subsequent stipulated Extensions of Time.

4. In support of this Motion under TBMP 508, Opposer expressly relies upon the Board's rulings involving "excusable neglect" discussed in the context of 37 C.F.R. 2.132(a). See *Atlanta-Fulton County Zoo, Inc. v. DePalma*, 45 USPQ2d 1858 (T.T.A.B. 1998) and *Pumpkin Ltd. v. The Seed Corps*, 43 U.S.P.Q. 1582 (T.T.A.B. 1997).

5. Applicant filed a Request for Extension of Time up to and including November 5, 2008 and was keenly aware of its requirement to file a timely Answer or otherwise timely respond on before its aforementioned self imposed deadline.

6. Applicant's failure to file a timely Answer or otherwise timely respond in the present proceeding "was due to circumstances wholly within its control" and amounts

to excusable neglect. See, e.g., *Atlanta-Fulton County Zoo Inc. v. DePalma*, 45 USPQ 2d 1858 (TTAB 1998).

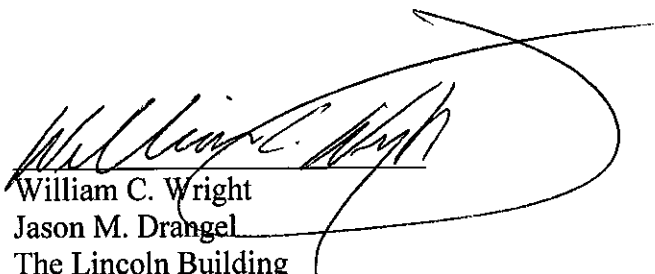
WHEREFORE, Opposer respectfully moves the Board to enter a default judgment, sustain the opposition, and grant any and all other relief requested by Opposer in its Notice of Opposition.

Respectfully submitted,

**EPSTEIN DRANGEL BAZERMAN &
JAMES, LLP**
Attorneys for Opposer

Dated: November 12, 2008

BY:


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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing COMBINED MOTION AND BRIEF FOR DEFAULT JUDGEMENT UNDER T.B.M.P. 508 was served by First Class Mail, with sufficient postage prepaid, on this 12th day of November, 2008, upon Applicant's attorney:

Mr. Barry Heyman
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26 Perry St., Apt. 4A
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BY:


William C. Wright