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

Proceeding	91186159
Party	Plaintiff MERCK KGAA
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	10/23/2008
Attachments	DOC102308ofn.pdf ( 4 pages )(75437 bytes )

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

In the Matter of the Trademark Application for NAPHTIZIN (In Cyrillic letters),  
Ser. No. 77/371,916, in the name of VAT "FARMAK"

MERCK KGAA,	)	
	)	
Opposer,	)	Opp. No. 91186159
	)	
v.	)	
	)	
VAT "FARMAK",	)	
	)	
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. 91186159, due to Applicant's failure to answer or otherwise defend the present proceeding in accordance with the Board's Order dated September 3, 2008

Applicant has not only failed to timely answer the Notice of Opposition by October 13, 2008, but has also failed to make any attempt whatsoever to answer or even attempt to make contact with the undersigned law firm relating to this proceeding at anytime. Accordingly, Opposer respectfully requests that the Board enter a default judgment against Applicant to prevent any further prejudice and undue

delay in the present inter parties proceeding. In support of this request for entry of default judgment, Opposer states the following:

1. On September 3, 2008, the Board Ordered clearly and ambiguously that Applicant's Answer was due on or before October 13, 2008. Copies of the aforementioned Order were forwarded to Applicant's attorney at her current address of record.

2. Applicant, either itself or through counsel, was clearly aware of the relevant and applicable dates set forth in the Board's Order dated September 3, 2008 and failed, in accordance with the requirements of TBMP 508, to file a timely Answer by October 13, 2008.

3. Even more peculiar is the fact that neither Applicant nor any counsel claiming to represent the Applicant, has ever attempted to contact the undersigned law firm or the U.S. Patent & Trademark Office regarding the administration of this proceeding. In this regard, the undersigned is completely unaware of any requests for extensions of time, stipulated or unstipulated, that may have been filed by the Applicant.

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). In *Pumpkin Lt.*, the Board reasoned that "additional unavoidable delay arises from time required for briefing and deciding motion, and since Trademark Trial and Appeal Board, and parties to board proceedings

generally, clearly have interest in minimizing amount of board's time and resources that must be expended on matters, such as most contested motions to reopen time, which result solely from sloppy practice or inattention to deadlines." *Id.*

5. Applying the Board's rulings involving excusable neglect to this issue, Applicant's failure to file a timely Answer in the present proceeding "was due to circumstances wholly within its control." *Atlanta-Fulton County Zoo Inc. v. DePalma*, 45 USPQ 2d 1858 (TTAB 1998).

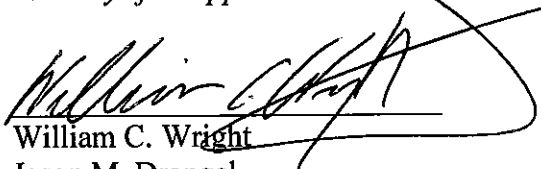
6. Clearly, the Applicant was aware of its requirement to file a timely Answer or otherwise respond to the Board's scheduling Order dated September 3, 2008, but neglected to do so.

**WHEREFORE**, Opposer respectfully moves the Board to enter a default judgment and grant the relief requested in Opposition No. 91186159 with prejudice.

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

Dated: October 23, 2008

By:

  
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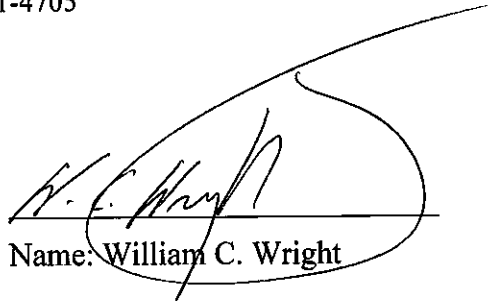
**CERTIFICATE OF SERVICE**

I hereby certify that on this 23<sup>rd</sup> day of October, a true copy of the foregoing OPPOSER'S COMBINED MOTION AND BRIEF FOR DEFAULT JUDGEMENT UNDER T.B.M.P. 508 has been served by first class mail, postage prepaid, on the following:

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Dated: October 23, 2008

BY:



Name: William C. Wright