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

Proceeding	91190723
Party	Plaintiff Boost Worldwide, Inc.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

BOOST WORLDWIDE, INC.,	:	
	:	
Opposer	:	
	:	Opp. No. 91190723
v.	:	
	:	
ARTIFICIAL LIFE, INC.,	:	
	:	
Applicant.	:	

**OPPOSER’S MOTION FOR DEFAULT JUDGMENT AND MOTION TO STRIKE  
APPLICANT’S LETTER PURPORTING TO ANSWER THE NOTICE OF OPPOSITION**

Counsel for Boost Worldwide, Inc. (“Opposer”) received a letter from Artificial Life, Inc. (“Applicant”) dated July 20, 2009. This letter, which purports to reply to the Notice of Opposition, is not currently posted on the Board’s TTABVUE system and may therefore not have been filed by Applicant. In the event that no answer was timely filed, Opposer hereby moves for the entry of an order of default judgment in its favor. If, on the other hand, the letter dated July 20, 2009, was timely filed with the Board, Opposer hereby moves for the entry of an order striking that letter.

**1. MOTION FOR DEFAULT JUDGMENT**

In its order dated June 22, 2009, the Board set a deadline of August 1, 2009, for Applicant to answer the Notice of Opposition. As of today’s date, August 17, 2009, TTABVUE lists no answer as having been filed with the Board. Accordingly, pursuant to Trademark Rule 2.106(a), Opposer hereby moves for the entry of an order of default judgment in its favor.

## **2. MOTION TO STRIKE**

Opposer's counsel received a letter from Applicant dated July 20, 2009, with the subject line "RE: Reply to the Opposition Notice." That document, even if it were timely filed with the Board, does not meet the requirements of Rule 8(b) of the Federal Rules of Civil Procedure or 37 C.F.R. §2.106(b)(1).

FRCP Rule 8(b) provides that a party's answer "shall state in short and plain terms its defenses to each claim asserted against it" and "admit or deny the allegations asserted against it by an opposing party." Trademark Rule 2.106(b)(1) mirrors the federal rule and states that an answer "shall state in short and plain terms the applicant's defenses to each claim asserted and shall admit or deny the averments upon which the opposer relies." TBMP §506.01 provides that "[u]pon motion, or upon its own initiative, the Board may order stricken from a pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter."


Applicant's July 20, 2009, letter contains irrelevant matter and includes conclusions of law and of fact that are not permitted in an answer to a Notice of Opposition. The letter is argumentative and more in the nature of a brief than an answer. It merely argues against a likelihood of consumer confusion and does not admit or deny each allegation and claim asserted in the Notice of Opposition, as is required. Accordingly, pursuant to FRCP 12(f) and TBMP §506.01, Opposer hereby requests that the letter – if it were timely filed by Applicant – be stricken in its entirety.

### **CONCLUSION**

For the foregoing reasons, Opposer requests the Board to enter a default judgment in Opposer's favor and strike Applicant's letter dated July 20, 2009, in its entirety.

Respectfully submitted,

BOOST WORLDWIDE, INC.

By:  \_\_\_\_\_

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Date: August 17, 2009

Attorneys for Opposer

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of this Motion for Default Judgment and Motion to Strike Applicant's Answer to the Notice of Opposition (re: Opposition No. 91190723) is being served on August 17, 2009, upon Applicant, Artificial Life, Inc., via first class international mail, postage prepaid, at the following address:

Artificial Life, Inc.  
26/F, 88 Hing Fat Street  
Causeway Bay, Hong Kong  
Hong Kong

By:  \_\_\_\_\_  
N. Christopher Norton