

ESTTA Tracking number: **ESTTA472962**

Filing date: **05/17/2012**

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

Proceeding	91200650
Party	Plaintiff Market America, Inc.
Correspondence Address	RYAN S LUFT MARKET AMERICA INC 1302 PLEASANT RIDGE ROAD GREENSBORO, NC 27409 UNITED STATES trademarks@marketamerica.com
Submission	Motion for Default Judgment
Filer's Name	Ryan S. Luft
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Signature	/Ryan S. Luft/
Date	05/17/2012
Attachments	Motion for Default Judgment.pdf (7 pages)(123775 bytes)

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

In the matter of trademark application Serial No. 85-145907

For the mark THE UNFRANCHISE

Published in the Official Gazette on June 21, 2011

Market America, Inc.)
)
v.)
)
Vantage Hospitality Group, Inc.)
_____)

MOTION FOR DEFAULT JUDGMENT

Opposer, Market America, Inc. (the “Opposer”), hereby moves for default judgment against the Applicant, Vantage Hospitality Group, Inc. (the “Applicant”), for failure to respond to an Order of the Trademark Trial and Appeal Board (“Board”) compelling the services of initial disclosures and discovery responses. In support thereof, the Opposer states as follows:

1. On January 11, 2012, the Opposer filed a Motion to Compel with the Board, as a result of Applicant’s failure to respond to the Opposer’s discovery requests or to serve initial disclosures.

2. On April 4, 2012, the Board issued an Order directing the Applicant to serve on the Opposer, within 15 days of the mailing date of the Order, (1) initial disclosures; and (2) responses to the Opposer’s first set of requests for production of documents and interrogatories. The Board cautioned the Applicant that its failure to comply may subject the Applicant to sanctions, potentially including entry of judgment against it. A copy of the Order is attached hereto as **Exhibit A**.

3. The Applicant failed to serve upon the Opposer any Initial Disclosures or responses to the Opposer's discovery requests by the Board-imposed deadline, and has yet to serve any such documents on the Opposer, in clear violation of the Order.

4. If a party to a TTAB proceeding fails to comply with an order of the Board, "the Board may make any appropriate order, including any of the orders provided in Rule 37(b)(2) of the Federal Rules of Civil Procedure[.]" 37 C.F.R. § 2.120(g)(1). One such order, particularly appropriate in this instance, is a rendering of a default judgment against the disobedient party. Fed. R. Civ. Proc. 37(b)(2)(A)(vi).

5. While entry of default judgment is a harsh remedy, such remedy is appropriate in situations like the present proceeding, where the Applicant has repeatedly ignored (i) the Opposer's requests for discovery; (ii) the Opposer's attempts to resolve the failure of Opposer to respond to those requests; (iii) well-established procedural rules; and (iv) an order of the Board compelling discovery and service of Initial Disclosures. *See Super Bakery, Inc. v. Benedict*, Cancellation No. 92047859 (September 16, 2010) (precedential); TBMP § 527.01(a) (3d. Ed. May 2011).

6. In this case, the Applicant has clearly disregarded the TTAB rules and the Board's Order, without any explanation. The facts of this case support a default judgment against the Applicant sustaining the Opposition to the Applicant's trademark application.

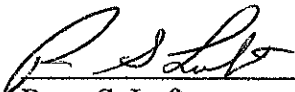
WHEREFORE, the Opposer respectfully prays that the Board enter an Order:

- (a) entering a default judgment against the Applicant sustaining the Opposition; and
- (e) directing such further relief as the Board deems appropriate.

Respectfully submitted,

Dated: May 17, 2012

MARKET AMERICA, INC.

By: 
Ryan S. Luft
Assistant General Counsel
1302 Pleasant Ridge Road
Greensboro, North Carolina 27409

CERTIFICATE OF SERVICE

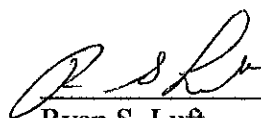
I hereby certify that the foregoing **Motion for Default Judgment** was served upon the Applicant by mailing a copy thereof by U.S. mail to the following:

**Kevin P. Crosby
Gray Robinson, P.A.
401 E. Las Olas Blvd. Ste 1850
Fort Lauderdale, FL 33301-4236**

Dated: May 17, 2012

MARKET AMERICA, INC.

By:



Ryan S. Luft
Assistant General Counsel
1302 Pleasant Ridge Road
Greensboro, North Carolina 27409

Exhibit A

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: April 4, 2012

Opposition No. 91200650

Market America, Inc.

v.

Vantage Hospitality Group,
Inc.

Jennifer Krisp, Interlocutory Attorney:

On January 11, 2012, opposer filed a motion to compel initial disclosures and discovery. Applicant did not file herein a brief in response thereto within the time provided under Trademark Rule 2.127(a).

The motion to compel initial disclosures and discovery is timely and is otherwise in compliance with Trademark Rule 2.120(e)(1). See TBMP § 523.02 (3d ed. 2011). The motion is hereby granted as conceded. See Trademark Rule 2.127(a); TBMP § 502.04 (3d ed. 2011).

A party which fails to respond to interrogatories or document requests during the time allowed therefor may be found, upon motion to compel filed by the propounding party, to have forfeited its right to object to the discovery request on its merits. See *No Fear Inc. v. Rule*, 54 USPQ2d 1551 (TTAB 2000); TBMP § 403.03 (3d ed. 2011).

Accordingly, applicant is directed to serve on opposer, within fifteen (15) days of the mailing date of this order, 1) initial disclosures, and 2) responses to opposer's first set of requests for production of documents, and first set of interrogatories. Applicant must respond in full and without objection on the merits thereof inasmuch as it failed to either timely respond or to object to said discovery. See *No Fear Inc. v. Rule*, 54 USPQ2d at 1554.

In the event that applicant fails to serve full responses as ordered herein, opposer's remedy lies in a motion for the entry of sanctions in the form of entry of judgment, as appropriate. See Trademark Rule 2.120(g)(1); TBMP § 411.05 (3d ed. 2011).

Schedule

Proceedings are resumed. Discovery and trial dates are reset as follows:

Expert Disclosures Due	5/11/2012
Discovery Closes	6/10/2012
Plaintiff's Pretrial Disclosures due	7/25/2012
Plaintiff's 30-day Trial Period Ends	9/8/2012
Defendant's Pretrial Disclosures due	9/23/2012
Defendant's 30-day Trial Period Ends	11/7/2012
Plaintiff's Rebuttal Disclosures due	11/22/2012
Plaintiff's 15-day Rebuttal Period Ends	12/22/2012

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.