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

Proceeding	91207771
Party	Plaintiff First Quality Water & Beverage, LLC
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Date	03/01/2013
Attachments	Opposer's Reply in Further Support of Default - FQWB v. Lake Placid.pdf ( 4 pages )(251218 bytes )

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

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FIRST QUALITY WATER & BEVERAGE, LLC, :  
 :  
Opposer, : Opposition No. 91207771  
 :  
v. :  
 :  
LAKE PLACID SPRING WATER, INC., :  
 :  
Applicant. :  
----- X

**OPPOSER’S REPLY IN FURTHER SUPPORT OF DEFAULT**

I. PRELIMINARY STATEMENT

Opposer First Quality Water & Beverage, LLC (“Opposer”) submits this Reply in Further Support of Default. As discussed more fully below, Applicant Lake Placid Spring Water, Inc. (“Applicant”) has: (1) failed to answer Opposer’s Amended Notice of Opposition by the Board-imposed deadline of January 6, 2013; and (2) failed to show cause why a judgment should not be entered against it by the Board-imposed deadline of February 21, 2013. Accordingly, in accordance with the Board’s January 22, 2013 Order, judgment should be rendered against Applicant pursuant to Fed. R. Civ. P. 55(a).

II. STATEMENT OF FACTS

On or about October 31, 2012, Opposer served and filed its Notice of Opposition in this proceeding (the “Original Notice”). On October 31, 2012, the Board issued an Order officially commencing the Opposition and setting forth a schedule of relevant deadlines for the Opposition. On November 12, 2012, before Applicant answered or otherwise moved with respect to the Original Notice, Opposer filed a First Amended Notice of Opposition (the “First Amended Notice”). Opposer served the First Amended Notice on Applicant, as well as counsel of record 535804.1

for Applicant, Todd Wengrovsky (“Applicant’s Counsel”) via Federal Express (collectively, the “Federal Express Packages”). Pekowsky Decl., Par. 3.<sup>1</sup>

Applicant and Applicant’s Counsel signed for their respective Federal Express Packages on November 13, 2012. *Id.* at Exh. A.

On December 10, 2012, the Board issued an Order giving Applicant until January 6, 2013, to respond to the First Amended Notice.

On January 22, 2013, the Board issued an Order indicating that Applicant failed to submit an Answer by the January 6, 2013 deadline, and gave Applicant until February 21, 2013 to show cause why a judgment should not be entered against it in this Opposition.

On February 15, 2013, Applicant filed Applicant’s Response to Notice of Default. Applicant argued that it is not in default because it served an Answer on December 7, 2012.

However, Applicant’s Answer is clearly labeled “Applicant’s Answer To Opposer’s Notice of Opposition”, and every reference in the Answer is to “Opposer’s Notice of Opposition.” Thus, it is clear that Opposer responded to the Original Notice, and not the First Amended Notice. *Id.* at Exh. B.<sup>2</sup>

Accordingly, Applicant has failed to comply with the Board’s December 10, 2012 Order to answer Opposer’s Amended Notice, and therefore, judgment should be entered against Applicant in this Opposition.

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<sup>1</sup> “Pekowsky Decl.” refers to the Declaration of Holly Pekowsky submitted herewith.

<sup>2</sup> Opposer received Applicant’s Answer to the Original Notice shortly after the December 7, 2012 date of service, but the Answer was never filed with the Trademark Office as required under the Rules. *Id.* at Par. 6. *See* T.B.M.P. Sec. 311.01(c) (“One copy of the answer, and any exhibits thereto, must be filed with the Board”). 535804.1

III. LEGAL ARGUMENT

Since Applicant: (1) failed to answer the First Amended Notice by the Board-imposed deadline of January 6, 2013; and (2) failed to show cause why a judgment should not be entered against it by the Board-imposed deadline of February 21, 2013, judgment should be rendered against Applicant in this Opposition. *See* 37 CFR § 2.106(a) (“If no answer is filed within the time set, the opposition may be decided as in case of default.”).

IV. CONCLUSION

Based on the foregoing, judgment should be entered against Applicant in accordance with Fed. R. Civ. P. 55(b).

Respectfully submitted,

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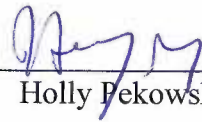
Dated: March 1, 2013  
New York, New York

By:   
Holly Pekowsky

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing REPLY IN FURTHER SUPPORT OF DEFAULT has been served on Applicant by delivering said copy via Federal Express, overnight delivery, prepaid to Applicant's attorney of record, as follows:

Todd Wengrovsky, Esq.  
Law Offices Of Todd Wengrovsky, PLLC  
285 Southfield Rd # 585  
Calverton, NY 11933-1416



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Holly Pekowsky

Dated: March 1, 2013  
New York, New York