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

Proceeding	91216973
Party	Plaintiff Argentina Properties LLC
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Attachments	Motion for Default Judgment FAENA opposition.PDF(201205 bytes)

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

Argentina Properties LLC,

Opposer,

against

Argentina Properties v. Tobacco International
Holdings Switzerland SA,

Applicant.

Opposition No. 91216973

MOTION FOR ENTRY OF DEFAULT JUDGMENT

Argentina Properties LLC (the “Opposer”), by and through its undersigned counsel, hereby moves for entry of default judgment against Argentina Properties v. Tobacco International Holdings Switzerland SA (the “Applicant”) and refusing Applicant’s application for registration, Ser. No. 86/116,015 (the “Opposed Application”) for failure to file a timely answer in this action.

Preliminary Statement

Opposer is the owner of a trade name Faena and a family of service marks for services including real estate development, real estate management and hotel services. Opposer initiated this proceeding on June 20, 2014 by filing its Notice of Opposition to the Opposed Application (the “Notice”). Opposer duly served the Notice on counsel for the Applicant on June 20, 2014 by first class mail. The Trademark Trial and Appeal Board (the “TTAB”) entered a scheduling order setting July 30, 2014 as Applicant’s deadline to answer the Notice. That deadline has come and gone, and Applicant has not filed an answer in this proceeding. Accordingly, Opposer is entitled to default judgment and Applicant’s Opposed Application should be refused.

Factual Background

I. Opposer and Its Family of Marks

Opposer is a limited liability company organized under the laws of Delaware. Opposer owns the trade name Faena (“Trade Name”) and a family of common law and federally registered trademarks and service marks for services including real estate development, real estate management and hotel services, including spas and hammams designed as spaces for spiritual and physical meditation and learning (the “Faena Marks”). Opposer has continuously made commercial use of the Trade Name and Faena Marks throughout the United States since at least November 30, 2004. By virtue of Opposer’s continuous use of the Trade Name and Faena Marks in interstate commerce, Opposer has acquired common law rights in them prior to the filing date of the Opposed Application. Opposer has expended significant amounts of time, money and effort in promoting and advertising the Trade Name and Faena Marks as well as the services sold thereunder. Opposer’s Trade Name and the Faena Marks are famous and consumers have come to recognize them as identifiers of Opposer’s products and services and as a single source of origin.

Opposer owns three federal trademark registrations and two pending applications for its family of Faena Marks:

- F FAENA (Stylized), Reg. No. 3,441,455
- FAENA HOTEL + UNIVERSE, Reg. No. 3,545,001
- FAENA HOUSE, Reg. No. 4,371,888
- FAENA SAXONY, Ser. No. 85/521,263
- FAENA, Ser. No. 86/308,091

II. Applicant, the Challenged Registration and Applicant's Default

Applicant is a corporation organized under the laws of Switzerland. Applicant filed the Opposed Application on November 12, 2013 on an intent-to-use basis for cigarettes.

On June 20, 2014, Opposer initiated this proceeding to oppose the Opposed Application on grounds of likelihood of confusion and tarnishment. On the same day, Opposer duly served the Notice via first class mail on Applicant's trademark counsel of record with the United States Patent and Trademark Office (the "USPTO"), namely Raj Abhyanker, Raj Abhyanker P.C., 1580 W. El Camino Real, Suite 8, Mountain View, CA 94040-2462. On June 20, 2014, the TTAB entered a scheduling order setting July 30, 2014 as Applicant's deadline for answering the Notice.

As of the date of this Motion, Applicant has not filed or served an answer to the Notice. Neither Applicant nor its trademark counsel have contacted Faena or its undersigned counsel regarding the Notice or this opposition proceeding. Applicant is therefore in default and judgment should be entered against Applicant and the Opposed Application should be refused.

Argument

Pursuant Section 508 of the TTAB Manual of Procedure and Federal Rule of Civil Procedure 55(b), the TTAB may enter default judgment against a Applicant who fails to answer a petition to cancel its registration. "[A] party's default is deemed to constitute a concession of all well pleaded allegations of liability." *Cement & Concrete Workers Dist. Council Welfare Fund v. Metro Found. Contrs. Inc.*, 699 F.3d 230, 234 (2d Cir. 2012); *see Allstar Mktg. Grp., LLC v. Media Brands Co.*, 775 F. Supp. 2d 613, 618 (S.D.N.Y. 2010) ("Where, as here, the court determines that defendant is in default, the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true.") (internal quotation marks omitted).

When considering a motion to enter default judgment, “plaintiff is entitled to all reasonable inferences from the evidence presented.” *Global Van Lines, Inc. v. Global Moving Express, Inc.*, No. 06 Civ. 3776, 2007 U.S. Dist. LEXIS 60794, at *3 (S.D.N.Y. Aug. 20, 2007).

The Opposed Application should be refused because Opposer has rights in the Faena Marks that are superior to those of the Applicant in the Opposed Application, whose use of the mark FAENA is likely to cause confusion with and tarnish Opposer’s Trade Name and the Faena Marks. Opposer’s commercial use of the Trade Name and Faena Marks predates Applicant’s date of application for the Opposed Application. In view of Opposers’ use and extensive advertising, the Trade Name and Faena Marks acquired distinctiveness and fame before the filing date of the Opposed Application. Applicant’s intended use of the mark FAENA for cigarettes is antithetical to the reputation that Opposer has created in using Trade Name and Faena Marks for spas and hammams designed as spaces for spiritual and physical meditation and learning.

By reason of all of the foregoing, the public is likely to be confused or deceived with respect to the source, origin, connection, affiliation, sponsorship or approval of Applicant’s goods or Opposers’ affiliation, sponsorship or connection with Applicant and Opposer’s Trade Name and Faena Marks and Opposer’s Trade Name and Faena Marks are likely to be tarnished by association with Applicant’s goods. Opposers will therefore be damaged unless the Opposed Application is refused.

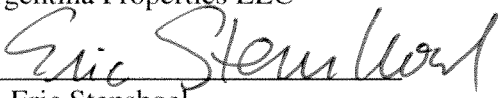
Conclusion

For at least the reasons stated above, the Petition should be granted and United States Trademark Application, Serial No. 86116015 should be refused. In addition, Opposers be granted all such further relief as the TTAB may deem necessary and just.

Respectfully submitted,

Argentina Properties LLC

Dated: New York, New York
August 18, 2014

By: 
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CERTIFICATE OF SERVICE

I hereby certify that, on the 18th day of August, 2014, I caused a true and correct copy of the Opposers' Motion for Default Judgment to be served via Email and First Class Mail upon:

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