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

Proceeding	91231429
Party	Plaintiff Valero Energy Partners GP LLC, Valero Energy Partners LP, Valero Marketing and Supply Company
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Submission	Motion for Default Judgment
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Date	03/09/2017
Attachments	Motion for Entry of Default Judgment.pdf(112358 bytes)

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

Application Serial No. 86/796505
Filed: October 22, 2015
Published for Opposition: September 27, 2016
Mark: VERO ENERGY (Class 36)

Application Serial No. 86/796499
Filed: October 22, 2015
Published for Opposition: September 27, 2016
Mark: VERO ENERGY (Class 35)

VALERO ENERGY PARTNERS GP LLC, VALERO ENERGY PARTNERS, LP, AND VALERO MARKETING AND SUPPLY COMPANY, OPPOSERS, vs. SOLUXE, INC., APPLICANT.	**Consolidated Opposition No. 91231429**

MOTION FOR ENTRY OF DEFAULT JUDGMENT

Pursuant to 37 C.F.R. 2.106(a) and Rule 55 of the FEDERAL RULES OF CIVIL PROCEDURE, Valero Energy Partners GP LLC, a Delaware limited liability company, and Valero Energy Partners LP, a Delaware limited partnership, and Valero Marketing and Supply Company, a Delaware corporation, (individually and collectively, "Opposer") file this Motion for Entry of Default Judgment against Soluxe, Inc. ("Applicant"), due to its failure to timely respond to the Notice of Opposition filed by Opposer, respectfully showing the Board as follows:

I. FACTUAL BACKGROUND

1. Opposer is the owner of (i) the VALERO ENERGY CORPORATION & Design mark that was the subject of U.S. Trademark Reg. Nos. 1202362 and 2632601; (ii) the VALERO ENERGY CORPORATION common law word mark; (iii) the VALERO ENERGY common law mark that is embodied in the V VALERO ENERGY PARTNERS LP mark which is the subject of U.S. Trademark Reg. No. 4,594,277 registered on August 26, 2014, and (iv) 11 other additional federal registrations embodying the VALERO mark for use in connection with a variety of goods and services in the energy industry and related industries as set forth in Opposer's Notice of Opposition. The registered trademarks, common law marks and trade names, are referred to herein individually and collectively as the "marks" or "trademarks." Many of the marks are incontestable under 15 U.S.C. § 1065.

2. On October 22, 2015, Applicant filed § 1(b) Application Serial No. 86/796505 in Class 36 for use in connection with "Energy brokerage services; Energy brokerage consulting services"; and § 1(b) Application Serial No. 86/796499 in Class 35 for use in connection with:

> Consulting and advisory services in the fields of energy procurement, energy rates and options for procurement of electricity and natural gas supply; Energy usage management information services; Procurement services, namely, purchasing electricity and natural gas for others; Procurement services, namely, procurement and renewal of contracts for others for the purchase of energy; Energy management services, namely, providing a service that allows customers to purchase electricity at market rates; Providing purchasing information in the field of energy, electricity, and natural gas markets; Procurement of energy, namely, purchasing energy for others; Providing information about the use of energy, namely, information in the fields of energy efficiency; Providing energy management services for others, namely, providing advice regarding energy efficiency; Providing consumer information regarding energy rate options; Business management and consultation services in the fields of energy, energy services, and electrical utilities; Providing energy usage management and information; Business consulting and advisory services in the field of energy efficiency; Business consulting services in the fields of energy measurement to improve energy efficiency within residential, commercial, industrial and institutional facilities; Consultation in the field of energy efficiency; Consulting

services in the field of energy efficiency for commercial and institutional facilities; Consulting services in the field of energy usage management and energy efficiency; Consulting services in the fields of energy consumption and usage conservation to improve energy efficiency; Information in the field of energy efficiency; Providing consumer information in the field of energy efficiency solutions and saving on energy costs; Providing consumer information in the field of selection of energy generating products, energy efficiency products, and renewable energy products; Providing consumer product information for the purpose of selecting energy generating and energy efficiency products to meet the consumer's specifications; Providing recommendations of service providers to consumers for commercial purposes; Provision of information, advice and consultancy in relation to energy efficiency.

3. On November 25, 2016, Opposer timely filed the Consolidated Notice of Opposition ("Notice") to initiate this proceeding, and served a copy of the Notice upon Applicant's counsel of record. On November 25, 2016, the Board served a copy of the Notice, along with a scheduling order. Applicant's answer was due on January 4, 2017.

4. Applicant failed to file an answer on or before January 4, 2017. The Board entered a Notice of Default against Applicant on January 19, 2017, informing Applicant in the Notice of Default that if it failed to file an answer within 30 days from the date of the order, a default judgment may be entered against it. As of the date of filing this Motion, Applicant has not filed an answer and has not requested an extension of time to file an answer.

II. REQUEST FOR RELIEF

5. Trademark Rule 2.106(a) provides that "If no answer is filed within the time set, the opposition may be decided as in case of default." 37 C.F.R. 2.106(a). *See also* FED. R. CIV. P. 55. Under these rules, "the failure to answer is all that is necessary to support [a default] judgment." *Old Grantian Co. v. William Grant & Sons, Ltd.*, 150 U.S.P.Q.2d 58, 60 (CCPA 1966).

6. Rule 55 requires that a default judgment be entered against a party that fails to plead or otherwise defend a case. It is well established that "[a] defendant, by his default, admits the plaintiff's well-pleaded allegations of fact, is concluded on those

facts by the judgment, and is barred from contesting on appeal the facts thus established." *Nishimatsu Constr. Co. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975). In other words, a defendant that fails to answer or otherwise defend a case admits, by virtue of its default, all of the well pleaded factual allegations in the plaintiff's complaint. *Id*.

7. Because no response has been filed by Applicant, Opposer requests that a default judgment be entered against Applicant.

Respectfully submitted,

By: /s/ Hank Fasthoff
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ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2017, this pleading was filed with the TTAB via ESTTA on the date set forth below, and that all counsel of record have been served at the address(es) set forth in the USPTO database.

Mr. Xavier Morales
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ATTORNEY FOR APPLICANT

/Hank Fasthoff/
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