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

Proceeding	91246798
Party	Plaintiff Yardbird Group LLC
Correspondence Address	MEREDITH FRANK MENDEZ MALLOY & MALLOY PL 2800 SW 3RD AVENUE MIAMI, FL 33129 UNITED STATES mmendez@malloylaw.com, droncayolo@malloylaw.com, aguer- rero@malloylaw.com, litigation@malloylaw.com 305-858-8000
Submission	Motion for Default Judgment
Filer's Name	Meredith Frank Mendez
Filer's email	mmendez@malloylaw.com, droncayolo@malloylaw.com, litiga- tion@malloylaw.com
Signature	/Meredith Frank Mendez/
Date	07/22/2019
Attachments	Motion for Default Judgment.pdf(165584 bytes)

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

In the matter of application Serial No. 87/954,024
Published for opposition: October 30, 2018
For the mark "YARD BIRD"

_____)	
YARDBIRD GROUP LLC,)	
a Delaware limited liability company,)	
)	
Opposer,)	
)	
v.)	
)	Opposition No. 91246798
SWI-DE, LLC,)	
a Delaware limited liability company,)	
)	
Applicant.)	
_____)	

OPPOSER’S MOTION FOR DEFAULT JUDGMENT

Opposer, YARDBIRD GROUP LLC (“Opposer”), pursuant to 37 C.F.R. § 2.114(a) and Fed. R. Civ. P. 55, moves for a default judgment against the Applicant, SWI-DE, LLC (“Applicant”). Applicant failed to answer or otherwise respond to the Notice of Opposition during the time allowed. Therefore, Applicant is in default, and Applicant’s failure and inability to show good cause why judgment by default should not be entered against it warrants the entry of a default judgment.

I. BACKGROUND.

On February 27, 2019, Opposer timely filed a Notice of Opposition against U.S. Serial No. 87/954,024 for the mark “YARD BIRD,” based on priority and likelihood of confusion. Subsequently, the Notice of Institution was forwarded to Applicant pursuant to Trademark Rules 2.105(b) and (c), and constituted service of the Notice of Opposition on Applicant. Applicant’s deadline to respond to the Notice of Opposition was May 15, 2019. To date, no Answer or other

response has been filed by Applicant or received by the undersigned. On June 3, 2019, the Board issued a Notice of Default requiring Applicant thirty days to show cause why judgment by default should not be entered against it, which Applicant failed to do. Therefore, default judgement against Applicant is warranted.

II. DEFAULT JUDGMENT SHOULD BE ENTERED AGAINST APPLICANT.

The Board should enter default judgment against the Applicant. *See* Fed. R. Civ. P. 55; 37 C.F.R. § 2.114(a). A defendant who does not file a timely answer is in default. *See* Fed. R. Civ. P. 55; 37 C.F.R. § 2.1064(a); TMEP § 312. Furthermore, “failure to answer is taken as an admission of the truth of the facts stated in the complaint, and the court may properly base its determination on such admission.” *Last Chance Mining Co. v. Tyler Mining Co.*, 157 U.S. 683, 691 (1895); *see also Old Grantian Co. v. William Grant & Sons, Ltd.*, 150 U.S.P.Q. 58, 60 (C.C.P.A. 1966) (“[T]he failure to answer is all that is necessary to support the [default] judgment.”).

Procedurally, a motion for default serves as a substitute for the Board’s issuance of notice of default. *See* TBMP §§ 312, 508. Should the respondent fail to file a brief in opposition to the motion that shows good cause, default judgment can be entered by the Board. *See id.* Here, Applicant failed to answer Opposer’s Notice of Opposition and failed to show good cause why judgment by default should not be entered against it. Therefore, the Board should enter default judgment in favor of Opposer and against Applicant.

III. CONCLUSION.

In light of the foregoing, Opposer respectfully requests that default judgment be entered against Applicant, that the Opposition be sustained, and that U.S. Serial No. 87/954,024 for the mark “YARD BIRD” be refused registration.

Dated: July 22, 2019

/Meredith Frank Mendez/
Meredith Frank Mendez
Florida Bar No. 502,235
mmendez@malloylaw.com
David I. Roncayolo
Florida Bar No. 121,663
droncayolo@malloylaw.com
MALLOY & MALLOY, P.L.
2800 S.W. Third Avenue
Miami, Florida 33129
Telephone: (305) 858-8000
Facsimile: (305) 858-0008

Counsel for Opposer

CERTIFICATE OF FILING

I HEREBY CERTIFY that the foregoing Petitioner's Motion for Default Judgment was filed electronically via the United States Patent and Trademark Office, Trademark Trial and Appeal Board's ESTTA electronic filing system on July 22, 2019.

/Meredith Frank Mendez/
Meredith Frank Mendez

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and complete copy of the foregoing Opposer's Motion for Default Judgment has been served on the following counsel of record via email on July 22, 2019 via email:

Donald C. Lucas
Lucas & Mercanti, LLP
30 Broad Street 21st Floor
New York, NY 10004
dcl@lmiplaw.com
info@lmiplaw.com

Counsel for Applicant

/Meredith Frank Mendez/