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

Proceeding no.	91273797
Party	Defendant Security Services, LLC
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Date	04/06/2022
Attachments	Motion to Strike Answer - ALWAYS ON.pdf(1035942 bytes)

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

In the matter of U.S. App. Ser. No. 88889400 for ALWAYS ON, ULTRASECURE
Published: September 14, 2021 in International Classes 9, 42

BearCom Group, Inc.)	
)	
Opposer,)	
)	
v.)	Opposition No. 91273797
)	
Security Services, Inc.)	
)	
Applicant and Counterclaimant.)	
)	
)	

APPLICANT’S MOTION TO STRIKE OPPOSER’S ANSWER TO COUNTERCLAIM

Applicant Security Services, Inc. (“Security Services” or “Applicant”) hereby moves to strike from the record in its entirety the Answer submitted by Opposer BearCom Group, Inc. (“BearCom Group” or “Opposer”) to Applicant’s Counterclaim, on ground that it is untimely. Trademark Rule 2.106(b)(3)(iii) provides Opposer is allowed until thirty days from the mailing date of an order to file an Answer to counterclaims. 37 C.F.R. § 2.106(b)(3). An Opposer’s failure to file an answer to counterclaims within the time initially set is a technical default and may be decided as in a case of default. 37 C.F.R. § 2.106(a), 37 C.F.R. § 2.114(a). Here, Opposer BearCom Group, Inc.’s period to answer Applicant’s counterclaims ended on March 17, 2022. (TTABVUE Doc. No. 5). However, BearCom Group failed to file its brief until after the deadline expired, namely on March 18, 2022. (TTABVUE Doc. No. 6). BearCom Group failed to seek an extension of time to file its late Answer and failed to provide any explanation or justification whatsoever for its flouting the rules and failure to file a timely submission. As BearCom Group failed to file an

answer within the required time frame without seeking an extension, BearCom Group is in technical default. The Board may therefore decide this opposition as in case of default. Trademark Rule 2.114(a); TBMP § 312.01 (June 2020).

“Litigation is run by rules designed to assure orderly conduct of the proceedings.” *Chesebrough-Pond’s Inc. v. Faberge, Inc.*, 618 F.2d 776, 780, 205 U.S.P.Q. 888, 891 (C.C.P.A. 1980). “One of those rules is the timely submission of briefs unless an extension of time has been granted.” *Id.* (emphasis in original). BearCom Group did not seek an extension of time or permission from the Board, or Applicant, to file its answer late. To be sure, no extension of time had ever been *requested*, let alone granted. “If no answer is filed within the time initially set, or as may later be reset by the Board, the opposition may be decided as in case of default.” 37 C.F.R. § 2.106(a). Where a party files a late answer and a notice of default has not yet issued, the late filer is in technical default. *DeLorme Publ’g Co v. Eartha’s Inc.*, 60 USPQ2d 1222, 1223 n.4 (TTAB 2000).

Here, Opposer failed to request an extension and failed to assert *any reason* or justification whatsoever for Opposer’s unpermitted failure to timely file its answer to Applicant’s counterclaim. Opposer simply knowingly flouted the rules. Applicant respectfully asserts Opposer’s failure to make such a timely filing was at all times within Opposer’s control. Applicant’s filing of its Answer and Counterclaim was timely but Opposer failed to request an extension of time from Applicant or the Board. Opposer’s failure to timely file its answer to Applicant’s counterclaim cannot be dismissed on the basis that its counsel is unsophisticated or unfamiliar with the applicable rules. Opposer is represented by a law firm asserting a global reputation and operating four offices in California and employing approximately 120 attorneys. (A true and correct copy of the LinkedIn webpage for Jeffer Mangels Butler & Mitchell LLP is attached as Exhibit A).

Lawyers at Opposer’s law firm have “extensive experience practicing before the Trademark Trial and Appeal Board of the USPTO.” There is no doubt that Opposer’s army of lawyers are aware of the applicable rules.

WHEREFORE, Opposer’s Answer to Applicant’s Counterclaim is untimely. Opposer is in technical default. For these reasons, Applicant respectfully requests the Board strike Opposer’s knowingly unauthorized Answer to Counterclaim from the record.

SECURITY SERVICES, INC.



Dated: April 6, 2022

By:

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Jutta M. Frankfurter, Esq.
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EXHIBIT A



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JMBM Partner Marianne S. Martin Profiled by the Los Angeles Times as a 2022...
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Matt Kenefick participated in a Rossdale CLE seminar titled "Mastering Judgment Enforcement and Debt Collection" on March 23, 2022.


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Burton Mitchell was quoted in the article, "Liz Weston: Am I obligated to report the money I pay domestic help to the IRS?" published by The Oregonian. It was also picked up by The Gainesville Sun on March 20, 2022.

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Tom Geher was quoted in the article, "Will Russia's invasion of Ukraine block the sale of L.A.'s most over-the-top mansion?" published by the Los Angeles Times on March 20, 2022.


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An article by Rod Berman, Jessica Bromall Sparkman and Lena Streisand titled "Recovery for IP infringement under the PREP Act" was published by the Daily Journal on March 17, 2022.

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David Sudeck was mentioned in the article, "Lodging leaders discuss California's comeback at CLIC," published by Hotel Management on March 18, 2022.

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Burton Mitchell was quoted in the article, "Protecting your identity beyond a credit freeze," published by the Los Angeles Times on March 13, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing APPLICANT'S MOTION TO STRIKE OPPOSER'S ANSWER TO COUNTERCLAIM was served by electronic mail on April 6, 2022, on counsel of record for Opposer:

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