

ESTTA Tracking number: **ESTTA1282869**

Filing date: **05/04/2023**

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

Proceeding no.	91284015
Party	Plaintiff CARGOBOT, INC.
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Submission	Motion for Default Judgment
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Date	05/04/2023
Attachments	Motion for Entry of Default Judgment.pdf(177757 bytes)

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

In the matter of Application No. 97/295,804
For the mark “CARGOBOT”

CARGOBOT, INC.,)	
a Delaware corporation,)	
)	
Opposer,)	
)	
vs.)	Opposition No. 91284015
)	
ZOOX, INC.,)	
a Delaware corporation,)	
)	
Applicant.)	

OPPOSER’S MOTION FOR ENTRY OF DEFAULT JUDGMENT

Opposer, Cargobot, Inc. (“Opposer”), by and through undersigned counsel and pursuant to 37 C.F.R. §2.114(a) and Fed. R. Civ. P. 55, moves for a default judgment against Applicant, Zoux, Inc. (“Applicant”). Applicant has failed to answer or otherwise enter a responsive pleading to the Notice of Opposition during the time allowed. Accordingly, judgment by default is warranted.

I. BACKGROUND

On March 20, 2023, Opposer timely filed its Notice of Opposition against Application No. 97/295,804, and effectuated service of same in compliance with 37 C.F.R. §§ 2.111 and 2.119. The same day, the Board issued its Notice of Institution and provided notice that an answer to the Notice of Opposition was due forty (40) days after the mailing date of such notice, namely, on or before April 29, 2023. However, to date, no answer or other response pleading has been filed by the Applicant or received by the undersigned.

II. DEFAULT JUDGMENT SHOULD BE ENTERED.

Trademark Rule 2.114(a) provides that “[i]f no answer is filed within the time initially set, or as later may be reset by the Board, the petition may be decided as in case of default.” 37 C.F.R. §2.114(a). *See also* Fed. R. Civ. P. 55(a). Under these rules, “the failure to answer is all that is necessary to support [default] judgment.” *Old Grantian Co. v. William Grant & Sons, Ltd.*, 150 U.S.P.Q. 58, 60 (C.C.P.A. 1966). A defendant “that fails to file a timely answer is in ‘default’ once the due date for the answer has passed.” *Paolo’s Assocs. Ltd. Partnership v. Paolo Bodo*, 21 U.S.P.Q.2d 1899, 1901 (Comm’r Pat. 1990) (cancellation). In such a case, the Board may issue a Notice of Default, or alternatively, the party in position of “plaintiff” may move for entry of a default judgment. *Id.*

In the present case, Applicant has failed to answer within the time set by the Board in accordance with Fed. R. Civ. P. 8(b) and Trademark Rule 2.114(a). Accordingly, as set forth in the above-referenced case law, Applicant is in default and the Board may enter a default judgment against Applicant. *See Paolo’s*, 21 U.S.P.Q.2d at 1901 (noting that, once notified of the default, a defaulting party must establish “good cause” for avoiding entry of default judgment).

In light of the foregoing, Opposer respectfully requests that default judgment be entered against Applicant.

Dated: May 4, 2023

Respectfully submitted,

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CERTIFICATE OF FILING

I HEREBY CERTIFY that the foregoing Motion for Entry of Default Judgment was filed electronically via the ESTTA, at the United States Patent and Trademark Office, Trademark Trial and Appeal Board's ESTTA electronic filing system on May 4, 2023.

/Meredith Frank Mendez/
Meredith Frank Mendez

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Motion for Default Judgment has been served on Applicant, ZOOX, INC., by forwarding said copy on May 4, 2023 via the email under the Applicant's "Correspondence Information" for the application at issue:

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