

TRADEMARK

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

Advance Food Company, Inc.,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92042722
)	
Anchor Food Products, Inc.,)	
)	
Registrant.)	

COMMISSIONER FOR TRADEMARKS
2900 Crystal Drive
Arlington, Virginia 22202-3514

**PETITIONER’S MOTION FOR DEFAULT JUDGMENT
WITH SUPPORTING BRIEF**

MOTION

Petitioner, Advance Food Company, Inc., hereby moves the Trademark Trial and Appeal Board for entry of default judgment against Registrant, Anchor Food Products, Inc., canceling U.S. Registration No. 1,390,981 for “A CASE OF THE MUNCHEEZ & Design.” Petitioner submits herewith its Brief in Support of Petitioner’s Motion for Default Judgment.

BRIEF IN SUPPORT OF PETITIONER’S MOTION FOR DEFAULT JUDGMENT

Petitioner filed a Petition for Cancellation on November 20, 2003 requesting that the Board cancel U.S. Registration No. 1,390,981 for “A CASE OF THE MUNCHEEZ & Design.” Registrant has failed to respond to the Petition for Cancellation. Therefore, default judgment canceling U.S. Registration No. 1,390,981 for “A CASE OF THE MUNCHEEZ & Design” is respectfully requested.

Petitioner filed a Petition for Cancellation on November 20, 2003, requesting that registration of U.S. Registration No. 1,390,981 be cancelled. On November 24, 2003, Petitioner filed U.S. Application Serial No. 76/563,638 for the mark "MUNCHEZE BREADED APPETIZERS & Design" and U.S. Application Serial No. 76/563,639 for the mark "MUNCHEZE." On December 16, 2003, the Board mailed a notice setting the deadline for Registrant's answer. The notice stated that Registrant's answer was due forty days from the mailing date thereon, which Petitioner calculates as January 25, 2004. Upon information and belief, Registrant failed to file the required answer by the due date, January 25, 2004. As of today's date, February 9, 2004, approximately two weeks after the initial due date, Petitioner has not been served with the answer as required by 37 C.F.R. § 2.119.

37 C.F.R. § 2.114(a) provides as follows: "If no answer is filed within the time set, the petition may be decided as in case of default." It appears that applicant failed to file an answer to the Petition for Cancellation by the due date of January 25, 2004. Therefore, pursuant to 37 C.F.R. § 2.114(a), default judgment should be granted in favor of Petitioner canceling Registrant's U.S. Registration No. 1,390,981.

Conclusion

As set forth herein, Applicant has failed to file a response to the Petition for Cancellation filed by Petitioner; therefore, Petitioner requests that default judgment be entered canceling U.S. Registration No. 1,390,981 for the mark "A CASE OF THE MUNCHEEZ & Design."

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PETITIONER'S MOTION FOR DEFAULT JUDGMENT WITH SUPPORTING BRIEF** was served upon Applicant by mailing the same via first-class mail on February 9, 2004, to the following:

Anchor Food Products, Inc.
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02-10-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #64

Madam:

Transmitted herewith for filing is Petitioner's Motion for Default Judgment with Supporting Brief in the case of Advance Food Company, Inc. v. Anchor Food Products, Inc., Cancellation No. 92042722. Also enclosed is a return, self-addressed postcard.

The Commissioner is hereby authorized to charge any fees required to file the motion in the above-mentioned case to Deposit Account No. 500449. A duplicate of this sheet is enclosed.

Respectfully submitted,

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