

ESTTA Tracking number: **ESTTA363911**

Filing date: **08/18/2010**

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

Proceeding	92051558
Party	Plaintiff Manhattan Construction Company
Correspondence Address	Jennifer B. Perry McAfee & Taft 1717 S. Boulder, Suite 900 Tulsa, OK 74119 UNITED STATES Jenna.Perry@mcafeetaft.com, diane.goswick@mcafeetaft.com
Submission	Motion for Default Judgment
Filer's Name	Jennifer B. Perry
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Signature	/Jennifer B. Perry/
Date	08/18/2010
Attachments	Motion for Default Judgment.pdf ( 5 pages )(945299 bytes )

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

MANHATTAN CONSTRUCTION	)	
COMPANY,	)	
	)	
Petitioner,	)	
	)	
v.	)	Cancellation No. 92051558
	)	
MANHATTAN SKYLINE CONSTRUCTION	)	
CORP.	)	
	)	
Registrant.	)	

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

**MOTION**

Petitioner, Manhattan Construction Company, hereby moves the Trademark Trial and Appeal Board (“TTAB”) for entry of default judgment against Registrant, Manhattan Skyline Construction Corp., canceling United States Registration No. 2,948,795 for the mark “MANHATTAN SKYLINE CONSTRUCTION CORP.” in its entirety. Petitioner submits herewith its Brief in Support of Petitioner’s Motion for Default Judgment.

**BRIEF IN SUPPORT OF PETITIONER’S MOTION FOR DEFAULT JUDGMENT**

On July 18, 2008, Petitioner filed United States Application No. 77/526,349 for the mark MANHATTAN CONSTRUCTION COMPANY and United States Application No. 77/478,127 for the mark MANHATTAN (collectively, the “Applications”). Both Applications were refused registration based on United States Registration No. 2,948,795 for “MANHATTAN SKYLINE CONSTRUCTION CORP.” for “general contracting services, renovation and rehabilitation of buildings” in International Class 037 (the “Registration”). Petitioner filed a Petition for

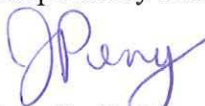
Cancellation on October 6, 2009, requesting that the TTAB cancel the Registration in its entirety. On November 9, 2009, December 11, 2009, January 15, 2010, February 16, 2010, March 16, 2010, April 15, 2010, and May 14, 2010, Registrant filed stipulated motions to extend the answer date based on settlement discussions. On June 14, 2010, Registrant filed an **eighth** stipulated motion to extend its answer date. The Board granted this extension and reset the deadline for Registrant's answer as requested in Registrant's own extension, i.e., July 14, 2010. Registrant has failed to file an answer or otherwise respond by its *own* requested extension due date. As of today's date, August, 18, 2010, more than thirty days after Registrant's extended answer date, Registrant has not filed an answer or otherwise responded to the Petition for Cancellation.

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." Fed. R. Civ. P. 55(a) states, "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." As shown by the TTAB database records, attached hereto as Exhibit A, Applicant has failed to file an answer to the Petition for Cancellation by July 14, 2010. Therefore, pursuant to 37 C.F.R. § 2.114(a), default judgment must be granted in favor of Petitioner canceling United States Registration No. 2,948,795 in its entirety as requested in the Petition for Cancellation.

### Conclusion

Petitioner hereby requests that default judgment be entered against Registrant canceling U.S. Registration No. 2,948,795 for the mark "MANHATTAN SKYLINE CONSTRUCTION CORP." in its entirety for failure to answer pursuant to Fed. R. Civ. P. 55(a) and 37 C.F.R. § 2.114(a).

Respectfully submitted,



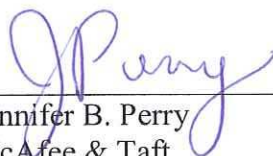
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Attorney for Petitioner

**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 Registrant by mailing the same via first-class mail on August 18, 2010, to the following attorney of record:

Robert B. G. Horowitz, Esq.  
Baker & Hostetler, LLP  
45 Rockefeller Plaza  
New York, NY 10111



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Attorney for Petitioner





TTABVue. Trademark Trial and Appeal Board Inquiry System

v1.5

Cancellation

Number: 92051558

Filing Date: 10/06/2009

Status: Pending

Status Date: 10/06/2009

Interlocutory Attorney: MARY CATHERINE FAINT

Defendant

Name: Manhattan Skyline Construction Corp.

Correspondence: Manhattan Skyline Construction Corp.
c/o The Zucker Organization, 101 West 55th Street
New York, NY 10019
UNITED STATES
rhorowitz@bakerlaw.com, ejoyce@bakerlaw.com,
nydocketing@bakerlaw.com

Serial #: 76401724 Application File

Registration #: 2948795

Application Status: Cancellation Pending

Mark: MANHATTAN SKYLINE CONSTRUCTION CORP.

Plaintiff

Name: Manhattan Construction Company

Correspondence: Jennifer B. Perry
McAfee & Taft
1717 S. Boulder, Suite 900
Tulsa, OK 74119
UNITED STATES
Jenna.Perry@mcafeetaft.com, diane.goswick@mcafeetaft.com

Serial #: 77526349 Application File

Application Status: Report Completed Suspension Check - Case Still Suspended

Mark: MANHATTAN CONSTRUCTION COMPANY

Serial #: 77478127 Application File

Application Status: Report Completed Suspension Check - Case Still Suspended

Mark: MANHATTAN

Prosecution History

Table with 4 columns: #, Date, History Text, Due Date. Contains 13 rows of prosecution history entries.



<a href="#">6</a>	12/11/2009	<a href="#">STIPULATION FOR AN EXTENSION OF TIME</a>	
<a href="#">5</a>	11/09/2009	<a href="#">EXTENSION OF TIME GRANTED</a>	
<a href="#">4</a>	11/09/2009	<a href="#">STIPULATION FOR AN EXTENSION OF TIME</a>	
<a href="#">3</a>	10/07/2009	PENDING, INSTITUTED	
<a href="#">2</a>	10/07/2009	<a href="#">NOTICE AND TRIAL DATES SENT; ANSWER DUE:</a>	11/16/2009
<a href="#">1</a>	10/06/2009	<a href="#">FILED AND FEE</a>	

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