

ESTTA Tracking number: **ESTTA828033**

Filing date: **06/19/2017**

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

Proceeding	92065911
Party	Plaintiff Joseph Valenti
Correspondence Address	PHILLIP THOMAS HORTON 47 SCHOOL STREET PEMBROKE, MA 02359 UNITED STATES Email: NEROLitigation@gmail.com
Submission	Motion for Default Judgment
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Date	06/19/2017
Attachments	NERO motion for default judgment.pdf(229060 bytes)

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

In the matter of trademark Registration No. 4657988, Serial No. 86280398
For the mark: NERO
Registered on December 16, 2014

Joseph Valenti, Petitioner, v. Ford Ivey d/b/a NERO World, LLC Defendant.	Cancellation No.: 92065911
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PEITIONER'S MOTION TO FOR DEFAULT JUDGMENT

Pursuant to 37 C.F.R. § 2.106(a), 37 C.F.R. 2.114(a), and TBMP § 312, Petitioner, Joseph Valenti (“Petitioner”), hereby moves for default judgment against Defendant, Ford Ivey d/b/a NERO World, LLC (“Defendant”) for failure to timely respond to Petitioner’s Petition to Cancel. In support of this Motion, Petitioner sets forth the following:

BACKGROUND

1. On or about April 13, 2017, Petitioner served Petitioner’s Petition to Cancel on Defendant through ESTTA.
2. On or about May 29, 2017, Defendant filed Defendant’s Motion to Dismiss for Failure to State a Claim (“Motion to Dismiss”), but failed to personally serve Petitioner via email, or by any other means, pursuant to TBMP rules and in contradiction to Defendant’s Certificate of Service.

1 **ARGUMENT**

2 3. Pursuant to 37 C.F.R. § 2.119(a) and TBMP § 113, “(e)xcept for the
3 notice of opposition or the petition to cancel, *every* submission filed in the Office
4 in inter partes cases, including notices of appeal to the courts, must be served
5 upon the other party or parties.”(emphasis added)

6 4. Under 37 C.F.R. § 2.119(b), “(s)ervice of submissions filed with the
7 Board and any other papers served on a party...must be made by email, unless
8 otherwise stipulated...”

9 5. Accordingly, neither Petitioner nor Defendant agreed or stipulated
10 to service by any other means. Therefore, service must be made by email in
11 accordance with 37 C.F.R. § 2.119(b).

12 6. “Proof of service is meaningless in the absence of actual service in
13 accordance with the statements contained in the proof of service.” See
14 *Springfield Inc. v. XD*, 86 USPQ2d at 1063.

15 7. Since there was ineffective service and since Defendant failed to
16 comply with the service requirement of the rules, Defendant’s Motion to
17 Dismiss should not have received a filing date and should be dismissed as a
18 nullity. See *Springfield Inc. v. XD*, 86 USPQ2d 1063 at n.2 (TTAB 2008).

19 8. Further, since Defendant’s Motion to Dismiss should be dismissed
20 for ineffective service, Defendant has failed to timely and effectively file an
21 Answer or Motion to Petitioner’s Petition to Cancel pursuant to 37 C.F.R. §
22 2.113.

23 **PRAYER FOR RELIEF**

24 9. Wherefore, Petitioner prays that the Board issue an order entering
25 a default judgment against Defendant sustaining the instant Cancellation
26 Petition.

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Respectfully submitted,

Dated: June 19, 2017

By: /Phillip Thomas Horton/
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CERTIFICATE OF SERVICE

I, Phillip Thomas Horton, Esq., certify that on this 19th day of June, 2017, a true and correct copy of the foregoing document was filed with the Trademark Trial and Appeal Board via the Electronic System for Trademark Trials and Appeals and was sent via email to:

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