

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Baxley

Mailed: April 6, 2018

Cancellation No. 92067402

G&S Sporting Goods, LLC

v.

Derrick L Gray

Andrew P. Baxley, Interlocutory Attorney:

On January 17, 2018, the Board issued a notice of default under Fed. R. Civ. P. 55(a) because no answer was of record. 4 TTABVUE. In a January 18, 2018 response thereto, Respondent failed to file an answer, but otherwise responded acceptably to the notice of default. *See* 6 TTABVUE.

In a January 30, 2018 order, the Board allowed Respondent until February 21, 2018 to file an answer. 8 TTABVUE. After Respondent failed to respond in any way to that order, the Board, on March 6, 2018, issued a second notice of default.¹ 9 TTABVUE. Respondent timely responded thereto (10 TTABVUE), but that response did not include an answer² and did not include proof of service upon Petitioner, as

¹ Under the circumstances, the Board could have entered judgment by default.

² Fed. R. Civ. P. 8(b) provides, in part:

(b) Defenses; Admissions and Denials.

(1) *In General*. In responding to a pleading, a party must:

(A) state in short and plain terms its defenses to each claim asserted against it; and

(B) admit or deny the allegations asserted against it by an opposing party.

required by Trademark Rule 2.119(a).³ Accordingly, the Board declines to consider that response.

In view of the foregoing, Respondent is allowed until **fifteen days** from the mailing date of this order to file through ESTTA pursuant to Trademark Rule 2.106(b)(1)1, and serve pursuant to Trademark Rule 2.119(b),⁴ an answer which

(5) *Lacking Knowledge or Information.* A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

The petition to cancel consists of 15 paragraphs setting forth the basis of Opposer's claim of damage. In accordance with Fed. R. Civ. P. 8(b), Respondent must answer the notice of opposition **by specifically admitting or denying the allegations contained in each paragraph. If Respondent is without sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, he should so state and this will have the effect of a denial.** Trademark Rule 2.106(b)(2).

³ The following is a suggested format for a certificate of service:

I hereby certify that a true and complete copy of the foregoing (insert title of submission) has been served on (insert name of opposing counsel or party) by forwarding said copy on (insert date of mailing), via email (or insert other appropriate method of delivery) to: (set out name, address, and email address of opposing counsel or party).

Signature

See TBMP § 113.03 (June 2017).

⁴ Trademark Rule 2.119(b) states as follows.

(b) Service of submissions filed with the Board and any other papers served on a party not required to be filed with the Board, must be on the attorney or other authorized representative of the party if there be such or on the party if there is no attorney or other authorized representative, and must be made by email, unless otherwise stipulated, or if the serving party can show by written explanation accompanying the submission or paper, or in a subsequent amended certificate of service, that service by email was attempted but could not be made due to technical problems or extraordinary circumstances, then service may be made in any of the following ways:

- (1) By delivering a copy of the submission to the person served;
- (2) By leaving a copy at the usual place of business of the person served, with someone in the person's employment;
- (3) When the person served has no usual place of business, by leaving a copy at the person's residence, with some person of suitable age and discretion who resides there;

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complies with Fed. R. Civ. P. 8(b). Failure to comply fully with this order may result in default judgment being entered against Respondent in this case.

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- (4) Transmission by the Priority Mail Express® Post Office to Addressee service of the United States Postal Service or by first-class mail, which may also be certified or registered
 - (5) Transmission by overnight courier; or
 - (6) Other forms of electronic transmission.