

UNITED STATES PATENT AND TRADEMARK OFFICE  
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mbm/kk

March 29, 2021

Cancellation No. 92076008<sup>1</sup>

*Essential Layer, Inc.*

*v.*

*Michael Krieger*

**By the Trademark Trial and Appeal Board:**

An answer to the petition to cancel was due on January 30, 2021. The record shows that an answer has not been filed.

This case now comes up for consideration of Petitioner's motion, re-filed February 10, 2021 and February 22, 2021, for default judgment against Respondent for failure to file an answer. The motion is uncontested.<sup>2</sup>

Inasmuch as Respondent failed to file an answer in this case, and failed to file a response to Petitioner's motion, the motion for default judgment is granted. *See* Trademark Rule 2.127(a).

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<sup>1</sup> Petition to cancel filed against Classes 24 and 25 only.

<sup>2</sup> If a Respondent fails to file an answer to a complaint during the time allowed therefor, the Board, on its own initiative, may issue a notice of default allowing the Respondent time to show cause why default judgment should not be entered against it. The issue of whether default judgment should be entered against a Respondent for failure to file a timely answer may also be raised by means of a motion filed by the Petitioner. In such cases, the motion may serve as a substitute for the Board's issuance of a notice of default. *See* TBMP §312.01.

Accordingly, judgment is hereby entered against Respondent, the petition for cancellation is granted, and Registration No. 4774614 will be cancelled in Classes 24 and 25 only in due course by the Commissioner for Trademarks. *See* Fed. R. Civ. P. 55(b) and Trademark Rule 2.127(a).

As a final matter, in its motion, Petitioner requests a partial refund under Trademark Rule 2.114. Trademark Rule 2.114(a)(2) provides, however, that a partial refund may be made in the event of default where the cancellation is based solely on abandonment or nonuse only if “**no filings** are made other than the petition to cancel.” 37 C.F.R. § 2.114(a)(2) (emphasis added). *See also* TRADEMARK FEE ADJUSTMENT, 85 Fed. Reg. 73197, 73208 (November 17, 2020) (clarifying that Trademark Rule 2.114(a)(2) applies where **no** additional filings are made and that a petitioner does not need to request a refund). Here, Petitioner filed a motion for default judgment and Trademark Rule 2.114 is inapplicable.