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

Proceeding no.	92080759
Party	Plaintiff Gastropub Productions, LLC
Correspondence address	COLLIN A. ROSE K&L GATES LLP 609 MAIN ST., SUITE 4150 HOUSTON, TX 77002 UNITED STATES Primary email: Collin.Rose@klgates.com Secondary email(s): HStrademarks@klgates.com 713-815-7300
Submission	Motion for Default Judgment
Filer's name	Collin A. Rose
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Signature	/Collin A. Rose/
Date	11/29/2022
Attachments	Motion for Default Judgment.pdf(533253 bytes)

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

Gastropub Productions, LLC, Petitioner, v. *Bocca District, LLC DBA Bocca Pizzeria LLC*, Respondent	Cancellation No. 92/080,759 Registration No.: 5,907,444 Mark: BOCCA PIZZERIA Registered: November 12, 2019

MOTION FOR DEFAULT JUDGMENT FOR FAILURE TO ANSWER AND BRIEF IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT FOR FAILURE TO ANSWER

Gastropub Productions, LLC ("Petitioner"), hereby moves the Board for an Order for entry of default judgment in the above matter. This Motion is made on the grounds that:

1. On October 11, 2022, the Board forwarded a copy of the Notice of Institution of the cancellation proceeding to Respondent who is identified by the records of the Office to be the current owner of the registration sought to be canceled. Respondent's Answer to the Petition for Cancellation was required to be filed on or before November 20, 2022, which was a Sunday, potentially giving Respondent until November 21, 2022 to file an Answer.

2. Respondent has failed to enter an appearance or file a timely Answer; and

3. Petitioner will be substantially prejudiced by the delay.

This Motion is based on the Brief in Support of Motion for Default Judgment filed herewith.

Date: November 29, 2022

Respectfully submitted,

/Collin A. Rose/

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Motion for Default Judgment and Brief in Support of Motion for Default Judgment has been served on Bocca District, LLC DBA Bocca Pizzeria by forwarding said copy on November 29, 2022, via email to: plazzari@sinergiconsulting.com.

Signature: /Collin A. Rose/
Date: November 29, 2022

BRIEF IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT FOR FAILURE TO ANSWER

Statement of Facts

The Petition for Cancellation was filed on or about October 11, 2022. As reflected by the Notice of Institution, in accordance with Trademark Rules 2.113 (b) and (c), the Notice of Institution was forwarded to Respondent, which constituted service of the Petition for Cancellation on Respondent. A response to the Petition for Cancellation was required to be filed on or before November 20, 2022, which was a Sunday, potentially giving Respondent until November 21, 2022 to file an answer. As of this date, Respondent has neither entered an appearance nor responded to the Petition for Cancellation.

A. In the Absence of a Showing of Good Cause, a Default Judgment Should be Entered.

1. Standard

If no answer is filed to a Petition for Cancellation within the time set by the Board, the Petition may be decided as in a case of default. 37 C.F.R. § 2.114(a). The issue of whether a default judgment should be entered for the failure to file a timely Answer may also be raised by a Petitioner's Motion for Default Judgment. TBMP § 508. Irrespective of how the issue of default is raised, the standard for determining whether a default judgment should be entered against Respondent for its failure to file a timely answer to the Petition for Cancellation requires that the Respondent show good cause why a default judgment should not be entered. Rule 55(a), F.R.Civ.P.; TBMP § 312.01. If a Petitioner files a Motion for Default Judgment based on the failure of the Respondent to file a timely Answer to the Petition for Cancellation and the Respondent fails to file a

brief in opposition to Petitioner's Motion showing good cause, a default judgment may be entered against the Respondent. TBMP § 508.

2. Petitioner is Being Substantially Prejudiced by the Delay.

Petitioner has used the mark BOCCA in U.S. commerce in connection with restaurant and bar services since at least as early as December 18, 2020. As a result of this use, consumers in the United States have come to associate the BOCCA mark, as used in connection with these services, with Petitioner and Petitioner's services. Petitioner therefore is the owner of common law rights in the BOCCA mark in connection with restaurant and bar services.

Petitioner has filed Application Serial No. 90/513,314 (the "Application") for the BOCCA mark in connection with "restaurant and bar services." The Application is pending.

In an Office Action dated September 5, 2021 and a Final Office Action dated April 7, 2022 (the "Office Actions"), the USPTO has cited the Respondent Registration against the Application, thereby interfering with Petitioner's Application and causing harm to Petitioner. This harm to Petitioner is within the zone of interests protected by the Lanham Act and is proximately caused by the Respondent Registration and therefore Petitioner is being substantially prejudiced by the delay.

Further, because Petitioner is in the business of selling the services identified in the Respondent Registration, namely restaurant and bar services, and is using the BOCCA mark in connection with these services, the continued validity of the Respondent Registration interferes with the Petitioner's current business. Therefore, Petitioner is being substantially prejudiced by the delay.

Petitioner therefore has been and will continue to be prejudiced by the delay in the cancellation proceeding because Respondent's Registration is preventing Petitioner from obtaining a registration for Petitioner's BOCCA mark.

B. Conclusion

It is respectfully submitted the failure of the Respondent to timely file an answer to Petition for Cancellation is without cause and, based thereon, a default judgment should be entered.

Date: November 29, 2022

Respectfully submitted,

/Collin A. Rose/

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