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U.S. Patent & TMOfc/TM Mail Rcpt Dt. #26

7412/87668

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

Unify Corporation,	)	Opposition No. 91,150, ~~446~~ 466
	)	Serial No. 76/098,180
Opposer	)	
	)	I hereby certify that this paper is being deposited with the United
v.	)	States Postal Service as Express Mail in an envelope addressed to
	)	Assistant Commissioner for Trademarks, 2900 Crystal Drive,
Sinpag International, Inc.,	)	Arlington, VA 22202-3513, on this date: June 14, 2002.
	)	Fred Franks
Applicant.	)	Express Mail No. EL 868818987 US

TRADEMARK TRIAL AND APPEAL BOARD
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APPLICANT'S RESPONSE TO THE BOARD'S NOTICE OF DEFAULT AND ORDER TO SHOW CAUSE; APPLICANT'S MOTION THAT ITS LATE-FILED ANSWER BE ACCEPTED

Applicant, Sinpag International, Inc. (hereinafter "Applicant"), by and through its attorneys, hereby timely responds to the Trademark Trial and Appeal Board's (TTAB) Order to Show Cause dated May 20, 2002, and requests that the default notice be set aside, that default not be entered, and moves that the Applicant's late-filed answer be accepted. Applicant respectfully submits that good cause is shown sufficient to grant Applicant's request because (1) the delay in filing the answer was not the result of willful conduct or gross neglect on the part of the Applicant, (2) the Opposer will not be prejudiced by the delay, and (3) the defendant has a meritorious defense to this opposition. In support of this response, Applicant states as follows:

1. Applicant's UNIFIED COLLABORATION mark was published in the *Official Gazette* of the United States Patent and Trademark Office, October 23, 2001 issue.

2. Opposer obtained the Board's permission to file its opposition beyond November 22, 2001, the close of the opposition period.

3. Opposer filed its Notice of Opposition within the time allotted by the Board and the Board issued its scheduling order on January 16, 2002.

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4. According to the scheduling order, Applicant's answer to the Notice of Opposition should have been filed by February 25, 2002.

5. When the scheduling order arrived at Applicant's counsel's office, the mail was processed initially as it should be processed in the usual course of business at the law firm: The original document is received by the docketing department. However, a copy is to be sent to the attorney(s) of record, Eric D. Cohen and a second attorney, A. Sidney Katz. (Ex. 1: Affidavit of Eric D. Cohen, ¶ 2.)

6. While it appears that the original scheduling order was received in the law firm's docketing department, neither the attorney of record, Eric D. Cohen, nor his secretary, received his copy and thus, did not enter the due date to file the answer. Accordingly, he was unaware that the Notice of Opposition was filed and that there was an answer due. (Ex. 1, ¶ 3.)

7. Further, Mr. Cohen spoke with Mr. Katz, who also did not receive a copy of the Board's Order. (Ex. 1, ¶ 3.)

8. Mr. Cohen's first actual awareness of the Notice of Opposition having been filed was when he received his copy of the Board's order to show cause why default should not be entered. (Ex. 1, ¶ 4.)

9. Upon investigation, it was discovered that there was an error in the processing of the mail which lead to counsel not being aware of the due date for the answer to the Notice of Opposition.

10. We ask that Applicant's late-filed Answer be accepted as in the case of *Paulo's Associates Ltd. v. Paolo Bodo*, 21 U.S.P.Q.2d 1899, 1904 (TTAB 1991) (The Board properly applied the Trademark Rules, the Federal Rules and relevant case law in allowing the Applicant's late-filed answer to notice of cancellation based on a docketing error. "The Board was entitled to rely on the representation of registrant's counsel that his docketing system failed him in this case.")

11. Applicant has the full intention to proceed with the opposition proceeding and believes that there is no likelihood of confusion between the marks. (Ex. 1, ¶ 5.)

12. In this regard, the United States Patent and Trademark Office did not cite any of Opposer's registrations against registration of Applicant's mark and approved the mark for publication despite registration of Opposer's marks.

13. Moreover, Applicant's goods and services are sufficiently distinct from Opposer's that there is no likelihood of confusion or damage to Opposer by registration of Applicant's mark.

14. Finally, Applicant began use of the UNIFIED COLLABORATION mark in July 2000 and is unaware of any instances of actual confusion resulting from use of the mark in view of the allegedly concurrent use of the mark UNIFY by Opposer.

WHEREFORE, Applicant respectfully requests that good cause has been shown such that default should not be entered against it and that the notice of default be set aside. Applicant's late-filed answer was not the result of its willful conduct or gross neglect, the Opposer will not be prejudiced by the short delay, and Applicant has a meritorious defense to this opposition. Applicant also respectfully moves that the Board exercise its discretion in accepting its late-filed answer to the notice of opposition. The Answer is being included with this Motion.

SINPAG INTERNATIONAL, INC.

Dated: June 14, 2002

By:

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DECLARATION OF ERIC D. COHEN

I, Eric D. Cohen, declare under penalty of perjury as follows:

1. I am an attorney employed at the law firm Welsh & Katz, Ltd., counsel of record for the Applicant, Sinpag International, Inc.

2. When the Trademark Trial and Appeal Board scheduling order concerning Opposition No. 91,150,446 arrived at Welsh & Katz, Ltd., it was initially processed as it should have been in the usual course of business at the firm: The original document is received by the docketing department. A copy is also to be sent to the attorney of record and to the second attorney on the docket, which second attorney for this application is Mr. A. Sidney Katz. However, it appears that this phase of the distribution process did not occur.

3. While it appears that the original scheduling order was received in the firm's docketing department, neither I nor my secretary received my copy of the Notice of Opposition and Board Order identifying the Answer due date. Thus, I did not enter into my calendar the due date to file the answer. In fact, I was unaware that the Notice of Opposition had been filed. Further, I spoke with Mr. Katz, and he informed me that he also did not receive a copy of the Notice of Opposition and Board Order identifying the Answer due date. Accordingly, neither of us were aware that the opposition proceeding had been instituted.

4. My first actual awareness of the Notice of Opposition being filed was when I received my copy of the Board's order to show cause why default should not be entered, which was fully docketed and processed correctly in accordance with the firm's standard procedures.

5. I am informed that the Applicant has the full intention to proceed with the opposition proceeding and believes that there is no likelihood of confusion between the marks.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 14, 2002

Eric D. Cohen

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of each of the foregoing APPLICANT'S RESPONSE TO THE BOARD'S NOTICE OF DEFAULT AND ORDER TO SHOW CAUSE; APPLICANT'S MOTION THAT ITS LATE-FILED ANSWER BE ACCEPTED; APPLICANT'S ANSWER TO NOTICE OF OPPOSITION was served on June 14, 2002, by first class mail, postage prepaid, addressed to the following:

Mitchell P. Brook, Esq.
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One of the Attorneys for Applicant