



Writer's Direct Number:

(202) 344-8152

jl patt@venable.com

June 15, 2004

TTAB

VIA HAND DELIVERY

Assistant Commissioner For Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513



06-15-2004

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

ATTN: BOX TTAB NO FEE

Re: **NATURAL SOURCE INTERNATIONAL, LTD.**
Mark: NATURAL SOURCE and Design - SERIAL NO. 76/504,365
OPPOSITION NO.: 91159137
Our Reference No.: 40803-204061

Sir:

We enclose the following for filing in the U.S. Patent and Trademark Office:

1. Applicant's Reply to Opposer's Opposition to Applicant's Motion for Leave to File Late Answer

Please charge any additional fees to the undersigned's Deposit Account No. 22-0261.

Please send all correspondence in connection with this matter to the undersigned's attention.

Respectfully submitted,

By: Jacqueline L. Patt
Jacqueline L. Patt
Attorney for Applicant

Enclosure: As Stated
JEL/bmh

528409v1(97)

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

Threshold Enterprises Ltd.,
Opposer,
vs.
Natural Source International, Ltd.,
Applicant.



06-15-2004

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

Opposition No. 91159137
Serial No. 76/504,365
Mark:
NATURAL SOURCE and Design

40803-204061

**APPLICANT'S REPLY TO OPPOSER'S OPPOSITION TO
APPLICANT'S MOTION FOR LEAVE TO FILE LATE ANSWER**

Applicant, Natural Source International, Ltd., respectfully submits its Reply to Opposer's opposition to its Motion for Leave to File Late Answer. Opposer submits this Reply in order to clarify points raised in Opposer's Opposition Memorandum.

Default judgments for failure to timely file an answer are not favored by the law; it is the policy of the law to decide cases on their merits. See TBMP §§312.02, 312.02.03. "The Board is very reluctant to enter a default judgment for failure to file a timely answer, and tends to resolve any doubt on the matter in favor of the defendant." See TBMP §312.02. Although a default judgment may be necessary in some cases, this is not the type of case where this extreme measure is warranted. See Id. Applicant has been actively involved in defending this matter from its inception including corresponding with Opposer's counsel regarding settlement negotiations and filing a Motion for Extension of Time. Moreover, once applicant obtained new counsel, it immediately filed its Motion for Leave to File Late Answer and Answer for

consideration by this Board. Therefore, Applicant respectfully submits that a default judgment is not warranted in this case.

In its Opposition Memorandum, Opposer has properly set forth the standard by which Applicant's motion is to be determined: The showing which is required to permit a late filed answer even before a Notice of Default has been issued is "good cause." Good Cause is established (1) if the delay is not the result of willful conduct or gross neglect, (2) if the delay will not result in substantial prejudice to the Opposer, and (3) if the defendant has a meritorious defense. See Fred Hayman Beverly Hills, Inc. v. Jacques Bernier Inc., 21 USPQ2d 1556, 1557 (TTAB 1991); see also TBMP § 312.02.

First, Applicant's twenty (20) day delay in filing its Answer does not rise to the level of willful conduct or gross neglect. See Fred Hayman, 21 USPQ2d at 1557 (applicant's nine day delay in filing its answer was inadvertent and not the result of any willful conduct or gross neglect when applicant's counsel failed to file the Answer before leaving for vacation over the Labor Day Holiday); compare DeLorme Publishing co. v. Eartha's Inc., 60 USPQ2d 1222, 1224 (TTAB 2000) (applicant's answer filed more than six months after the date due was a result of applicant's willful conduct and gross neglect).

Moreover, as stated in Applicant's Motion for Leave, Applicant's delay was caused by its belief that settlement negotiations were ongoing and that applicant sought new legal counsel to represent it in these proceedings.

Opposer states that "applicant fails to explain in its motion that the parties were nowhere near reaching a settlement at the time the answer was due." See Opposer's Opposition Memorandum at p.5. As stated in the Declaration of Mary Catherine Merz, Applicant's prior counsel sent a letter proposing counter settlement terms on April 21, 2004. See Declaration of

Mary Catherine Merz, attached as Exhibit A to Opposer's Opposition Memorandum, at ¶ 6. Ms. Merz also states that "I did not respond on behalf of Threshold Enterprises to the April 21, 2004 letter from attorney Nadia Kaddour, because Threshold Enterprises was not interested in accepting the most recent terms proposed and had no further counter settlement proposal to make." See id. ¶ 7. If Opposer's counsel did not communicate to Applicant's prior counsel that Opposer was not going to accept Applicant's offer or provide a counter settlement proposal, then there was no way for Applicant's counsel to know that "the parties were nowhere near reaching a settlement." Consequently, as stated in its Motion for Leave, Applicant still believed settlement negotiations were ongoing, even if Opposer did not.

Therefore, Applicant's short delay in filing its Answer was not a result of any willful conduct or gross neglect on the part of the defendant.

Second, Opposer alleges that it will suffer prejudice in that it will be "forced to incur further delay¹ and expense in resolving this matter, and [Opposer's] ability to assess the scope of its rights and to enforce those rights in other trademark conflicts will be compromised." See Opposer's Memorandum at p. 3. However, these allegations of prejudice do not establish "substantial prejudice" sufficient to deny Applicant's Motion. See DeLorme Publishing, 60 USPQ2d at 1224. (Opposer did not establish prejudice when Opposer filed two more trademark applications on the presumption that a default judgment would be entered against applicant, and when Opposer stepped up its advertising campaign at substantial expense).

Moreover, Opposer did not "allege that witnesses or evidence have become unavailable due to the passage of time." See id. at 1224. Therefore, Opposer has not set forth sufficient facts to constitute substantial prejudice.

¹ Applicant would be willing to agree to a twenty (20) day extension of all discovery and trial dates equal to Applicant's delay in filing its Answer, in order to minimize any minimal prejudice suffered by Opposer.

On the other hand, Opposer may suffer prejudice in that it would have to actively prosecute the opposition of applicant's mark if this Board granted Applicant's motion. But since Opposer filed this opposition in the first place, Applicant fails to see that granting Applicant's Motion would cause any substantial prejudice on Opposer

Finally, Opposer stated that Applicant did not establish a meritorious defense to the action. See Opposer's Opposition Memorandum at p.4. All that is necessary to establish a meritorious defense is a plausible response to the allegations contained in the Notice of Opposition. See DeLorme Publishing, 60 USPQ2d at 1224; see also TBMP § 312.02. The submission of an answer which is not frivolous is sufficient to show a meritorious defense. Fred Hayman, 21 USPQ2d at 1557. Applicant submitted its Answer along with its Motion for Leave. Therefore, Applicant has satisfied this requirement.

WHEREFORE for good cause shown, Opposer's Motion for Leave to File an Amended Notice of Opposition should be granted.

Respectfully submitted,

Dated: June 15, 2004



Janet F. Satterthwaite
Jacqueline Levasseur Patt
VENABLE LLP
575 7th Street, N.W.
Washington, D.C. 20004-1601
Telephone: (202) 344-4000
Telefax: (202) 344-8300

Attorneys for Applicant

CERTIFICATE OF SERVICE

The undersigned, attorney for Applicant, hereby certifies that she served, by first class mail, postage prepaid, a copy of the foregoing Applicant's Reply To Opposer's Opposition To Applicant's Motion For Leave To File Late Answer upon attorney of record for Opposer, Mary Catherine Merz, Esq., Merz & Associates, P.C., 1140 Lake Street, Suite 304, Oak park, Illinois 60301-1051, this 15 day of June, 2004.


Jacqueline Levasseur Patt