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

Proceeding	91167100
Party	Defendant International Outsourcing Services, LLC International Outsourcing Services, LLC 501 South Madison Bloomington, IN 47403
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Date	01/19/2006
Attachments	GRAND RIVER-Consented Motion to Show Good Cause and to Extend App's Time to Answer.pdf (3 pages)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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CABELA'S INC.	)	
	)	
Opposer,	)	Opposition No. 91167100
	)	
v.	)	Mark: GRAND RIVER
	)	
INTERNATIONAL OUTSOURCING SERVICES, LLC	)	Serial No. 78/522,085
	)	
	)	
Applicant.	)	

CONSENTED MOTION TO SHOW GOOD CAUSE WHY JUDGMENT BY DEFAULT SHOULD NOT BE ENTERED AND TO EXTEND APPLICANT'S TIME TO ANSWER

Applicant, International Outsourcing Services, LLC, by its undersigned counsel, Sonnenchein, Nath & Rosenthal LLP, respectfully moves to extend the time set for Applicant to file an Answer to the Notice of Opposition to February 19, 2006. Counsel for Opposer, Barry Kelmachter of Bachman & LaPointe, P.C., consented to this motion by telephone on January 18, 2006.

Good cause why default judgment should not be entered against a defendant, for failure to file a timely answer to the complaint, is usually found when the defendant shows that: 1) the delay in filing an answer was not the result of willful conduct or gross neglect on the part of the defendant, 2) the plaintiff will not be substantially prejudiced by the delay, and 3) the defendant has a meritorious defense to the action. *See* TBMP § 312.02; *See also Paolo's Assoc. Ltd. Part. v. Paolo Bodo*, 21 U.S.P.Q.2d 1899, 1903 (Comm'r 1990) (following this standard, defendant's motion to accept late answer was granted).

The delay in filing an answer was not the result of willful conduct or gross neglect, but was in fact quite the opposite. Upon receipt of the Opposition, Applicant began strategizing on possible ways that both parties could work out on agreement to coexist with their respective

marks. For example, Applicant thought of possible ways that either party could amend its application to the satisfaction of both parties.

In order to work towards settlement, Applicant also had to figure out which goods and services it definitely wanted to use the GRAND RIVER mark for, which was a lengthy and difficult process since the mark is new, and the application is an intent to use application. Applicant worked diligently with its relevant employees and counsel to create a proposal for Opposer but, due to the time it took to get all the relevant people together, especially with it being during the holiday season, Applicant did not generate a proposal in time. Throughout this effort and difficulty in reaching the relevant people, Applicant inadvertently missed the deadline and did not file for an extension. Such effort is not considered willful conduct or gross neglect and actually shows Applicant's worthy intentions. *Fred Hayman Beverly Hills v. Jacques Bernier*, 21 U.S.P.Q.2d 1556, 1557 (TTAB 1991) (failure to file answer due to inadvertence was not willful conduct or gross neglect). Additionally, Applicant and Opposer are, through their counsel, in settlement negotiations.

Opposer has not and will not be prejudiced by Applicant's delay in filing an answer. In fact, Opposer, through its counsel, has stipulated to Applicant being awarded an extension to file the Answer. Settlement negotiations between the parties are ongoing and counsel for Opposer is currently drafting a settlement agreement including a proposal for Applicant to limit the scope of the goods of its application and Applicant awaits receipt of the draft proposal for review.

In addition, Applicant does have meritorious defense to the action. The showing of a defense does not require an evaluation of the merits of the case. *See* TBMP § 312.02. All that is required is a plausible response to the allegations in the complaint. Applicant has a plausible response to each allegation in the complaint, none of which is frivolous or in bad faith. *See Fred*

Hayman Beverly Hills, 21 U.S.P.Q.2d at 1557 (defendant had a meritorious defense when its responses were not frivolous). Since the parties are actively seeking to resolve this matter through settlement and possible amendment of Applicant's application, however, Applicant does not want to file its formal Answer to the Opposition at this time.

Last, the determination of default judgment is within the discretion of the Board. However, the Board "must be mindful of the fact that it is the policy of the law to decide cases on their merits." TBMP § 312.02. As a result, the Board is normally reluctant to enter a default judgment and tends to resolve any doubt on the matter in favor of the defendant. Id.

Respectfully submitted,

Date: January 19, 2006

By_____
Attorney for Applicant
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing CONSENTED MOTION TO SHOW GOOD CAUSE WHY JUDGMENT BY DEFAULT SHOULD NOT BE ENTERED AND TO EXTEND APPLICANT'S TIME TO ANSWER is being served on Opposer by depositing same with the United States Postal Service with sufficient postage as first class mail on January 19, 2006 addressed as follows:

Barry L. Kelmachter, Esq.
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Peggy L. McBride, Trademark Paralegal

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