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

Proceeding	91170028
Party	Defendant Altair Relocation, Inc. Altair Relocation, Inc. Suite 400 16000 Dallas Parkway Dallas, TX 75248
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Date	07/14/2006
Attachments	Motion to Submit Late-Filed Answer.pdf (4 pages)(1095676 bytes)

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

In the Matter of Trademark Application Serial No. 78/495356

Applicant: Altair Relocation, Inc.

Trademark: ALTAIR

Class: 35

Altour International, Inc.,

Opposer,

- against -

Altair Relocation, Inc.,

Applicant.

Opposition No.: 91170028

APPLICANT'S MOTION TO
SUBMIT LATE-FILED
ANSWER

APPLICANT'S MOTION TO SUBMIT LATE-FILED ANSWER

INTRODUCTION

Altair Relocation, Inc. ("Applicant") hereby requests that the Board allow Applicant to submit its Answer in the above Opposition ten days late, for the reasons stated herein.

The undersigned counsel for Applicant has held a telephone conference with counsel for Altour International, Inc. ("Opposer") concerning the filing of this Motion. Opposer's counsel does not object to the filing of the Motion.

ARGUMENT

1. Applicable Law

The Board will allow a late-filed Answer where the Applicant makes a satisfactory showing of good cause as to why default judgment should not be entered against it. TMEP

§312.02; Fed. R. Civ. P. 55(c). To establish good cause as to why default judgment should not be entered for failure to file a timely answer, the Applicant must show that (1) the delay in filing an answer was not the result of willful conduct, bad faith, or gross neglect; (2) the Opposer was not substantially prejudiced by the delay; and (3) the Applicant has a meritorious defense to the complaint. TMEP §312.02; *Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 U.S.P.Q. 2d 1556 (TTAB 1991) (where Board had not yet issued a notice of default at the time of applicant's motion, the motion was treated the same as a response to a notice of default).

Furthermore, the law strongly favors determination of cases on their merits. *DeLorme Publishing Co. v. Eartha's Inc.*, 60 U.S.P.Q.2d 1222 (TTAB 2000).

2. Applicant's Delay Was Inadvertent

The undersigned counsel's administrative assistant inadvertently miscalendared the due date for the Answer on counsel's docket for July 10, 2006 rather than for July 4, 2006, which was the correct date. The undersigned became aware of the mistake on July 6, 2006 and immediately began efforts to reach the TTAB and opposing counsel to notify of them of the error. This calendaring mistake by the offices of Applicant's counsel was not the result of willful conduct, bad faith, or gross neglect. See *Fred Hayman Beverly Hills, Inc.*, 21 U.S.P.Q.2d 1556 (counsel's docketing mistake was clearly due to inadvertence rather than willful conduct or gross neglect).

3. Opposer is Not Substantially Prejudiced by the Delay

Counsel for Applicant and Opposer have been in settlement discussions concerning this dispute for several months. Because progress was being made toward that end, counsel agreed to an extension of time for filing Applicant's Answer, which was originally due on May 5, 2006. The Board granted Applicant a 60-day extension of time until July 4, 2006.

The parties remain in settlement discussions at this time. In light of the ongoing settlement efforts and opposing counsel's consent to Applicant's extension for filing the Answer and her consent to the filing of this Motion and Answer, Opposer has not been prejudiced by the delay. See *id.* at 1556 (nine-day delay in filing of Applicant's answer found not to prejudice Opposer).

4. Applicant Has a Meritorious Defense to the Opposition

Applicant's Answer to Opposer's Notice of Opposition sets forth numerous denials of Opposer's allegations and asserts several meritorious affirmative defenses in its Answer. The Answer has been filed with the Board electronically on this date in connection with this Motion.

CONCLUSION

For the foregoing reasons, Applicant respectfully requests that the Board permit Applicant's Answer to be submitted late, and that the Board refrain from issuing a Notice of Default Judgment in this opposition proceeding.

Dated: July 14, 2006

Respectfully submitted,

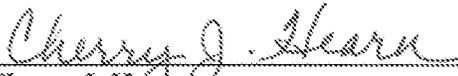


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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Applicant's Motion to Submit Late-Filed Answer has been served on Opposer Altour International, Inc. by fax and by mailing on July 14, 2005 via first class mail, postage prepaid to Opposer's counsel of record as follows:

Ms. Christy L.E. Hubbard
Lewis and Roca L.P.
40 North Central Avenue
Phoenix, AZ 85004-4429


Cherry J. Heam