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

Proceeding	91177025
Party	Defendant Mohammad A. Mazed
Correspondence Address	EDWARD C. KWOK MACPHERSON KWOK CHEN & HEID LLP 2033 GATEWAY PL STE 400 SAN JOSE, CA 95110-3715 UNITED STATES jlantz@macpherson-kwok.com
Submission	Other Motions/Papers
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Date	09/14/2007
Attachments	Motion To Remove Notice Of Default.pdf (6 pages)(153995 bytes)

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

ESCORT, INC. Opposer, v. MOHAMMAD A. MAZED, Applicant.	Opposition No. 91177025 Application Serial No. 78/923,816 Published: April 3, 2007

MOTION TO REMOVE NOTICE OF DEFAULT

Pursuant to Federal Rule of Civil Procedure 55, Applicant Mohammed A. Mazed ("Applicant") hereby moves the Trademark Trial and Appeal Board to remove the notice of default entered on or about August 15, 2007 in Opposition No. 91177025.

Fed. R. Civ. P. 55(c) provides that a default may be set aside "for good cause shown." In this instance, the parties have concluded a settlement in principle, and are circulating the settlement agreement for signature. The settlement agreement was signed by Applicant on September 1, 2007, and forwarded to Opposer on September 4, 2007 for Opposer's signature. Applicant submits its proposed Answer herewith.

If a defendant who has failed to file a timely answer to the complaint responds to a notice of default by filing a satisfactory showing of good cause why default judgment should not be entered against it, the Board will set aside the notice of default. *See* TBMP § 312.02. 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. *Id.* The showing of a meritorious defense does not require an evaluation of the merits of the case. *Id.* All that is required is a plausible response to the allegations in the complaint. *Id.* The determination of whether default judgment should be entered against a party lies within the sound discretion of the Board; however, in exercising that discretion, the Board must be mindful of the fact that it is the policy of the law to decide cases on their merits. *Id.*

In this instance, the parties have settled the underlying dispute in principle as of September 1, 2007, and the failure to file an Answer or a request to further extent Applicant's time to answer was due solely to inadvertence on the part of Applicant's counsel, due to the ongoing settlement efforts. A previous stipulated motion to extend the time to answer were filed during the parties' settlement discussions. At the time the Answer was due, the parties were finalizing the settlement documents. There is no prejudice to Opposers, as the parties have settled the dispute in principle. Applicant's responses to the allegations of the complaint are that the goods offered by Applicant under Applicant's mark "BANDWIDTH PASSPORT" are not closely related enough to any of Opposer's goods offered under any of the marks in Opposer's alleged family of "PASSPORT" marks so as to be likely to cause confusion. In addition, Applicant's intended mark "BANDWIDTH PASSPORT" does not resemble any of the marks in Opposers' alleged family of "PASSPORT" marks so closely as to be likely to cause confusion, mistake or deception.

The parties hereby respectfully request that the notice of default be removed, and

that the Answer, attached hereto as Exhibit A, be entered by the Board.

Counsel for Applicant hereby states that Applicant has sought Opposer's consent to this motion, which Counsel for Opposer has withheld pending the final signatures on the settlement agreement by Opposer.

Mohammed A. Mazed

By: _____

Counsel for Applicant

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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ANSWER TO NOTICE OF OPPOSITION

Applicant Mohammad A. Mazed. ("Applicant") answers the claims of Opposer Escort, Inc. ("Opposer") as follows. Paragraph numbers in the Answer correspond to the paragraph numbers in the Notice of Opposition.

1. Applicant is without knowledge as to the truth of the assertions in Paragraph 1, therefore denied.

2. Applicant is without knowledge as to the truth of the assertions in Paragraph 2, therefore denied.

3. Applicant is without knowledge as to the truth of the assertions in Paragraph 3, therefore denied.

4. Applicant is without knowledge as to the truth of the assertions in Paragraph 4, therefore denied.

5. Applicant is without knowledge as to the truth of the assertions in Paragraph 5, therefore denied.

6. Applicant is without knowledge as to the truth of the assertions in Paragraph 6, therefore denied.

7. Applicant is without knowledge as to the truth of the assertions in

Paragraph 7, therefore denied.

8. Denied.

9. Admitted.

10. Denied.

11. Denied.

12. Admitted that Applicant's goods are in the same International Class as Opposer's alleged goods, otherwise denied.

13. Denied.

14. Denied.

15. Denied.

16. Admitted.

17. Denied.

18. Denied

WHEREFORE, Applicant prays that Application Serial No. 78/923,816 be determined to be registrable, and the Board dismiss this Opposition, and direct that the Application be registered on the Principal Register

Date: September 14, 2007

Jennifer M. Lantz
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Attorneys for Applicant
MOHAMMAD A. MAZED

CERTIFICATE OF SERVICE

I CERTIFY that on this 14th day of September, 2007, a copy of Applicant MOHAMMAD A. MAZED's **ANSWER TO NOTICE OF OPPOSITION** was sent via U.S. Mail to the following counsel of record:

Brett A. Schatz, Esq.
Wood, Herron & Evans, L.L.P.
441 Vince Street, 2700 Carew Tower
Cincinnati, OH 45202 UNITED STATES

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Rowena Renteria