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

Proceeding	91177463
Party	Defendant Promgirl, LLC
Correspondence Address	CARLOS CARVAJAL 432 PARK AVE S FL 2 NEW YORK, NY 10016-8013 UNITED STATES Carloslawnyc@aol.com
Submission	Other Motions/Papers
Filer's Name	Sherry Flax
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Date	08/31/2007
Attachments	promgirlmo.pdf (2 pages)(21554 bytes) promgirl.pdf (2 pages)(19468 bytes)

IN THE TRADEMARK TRIAL AND APPEAL BOARD

In re Appication of Promgirl, Inc.
Mark: PROMGIRL
Serial No. 78875592

Promgirl, Inc.

Opposer

v. Opposition No. 91177463

Promgirl, LLC

Applicant

MOTION TO SET ASIDE DEFAULT JUDGMENT

Promgirl, LLC ("Applicant") respectfully requests that the default judgment entered in this opposition proceeding be set aside for good cause pursuant to Federal Rule of Civil Procedure 55(b). Applicant's failure to timely file an Answer to the Notice of Opposition was not willful. Setting aside the default will not prejudice Opposer in any respect. Finally, Applicant has a meritorious defense to the opposition. This motion is filed within the time set forth by the Board.

Courts have the inherent power to consider equitable factors in deciding whether to set aside the entry of a default judgment. *Enron Oil Corp. v. Diakuhara*, 10 F.3d 90, 96 (2d Cir. 1993). Courts strive to resolve cases on the merits and avoid harsh or unfair results. *Key Bank of Me. v. Tablecloth Textile Co.*, 74 F.3d 349, 356 (1st Cir. 1996).

The Notice of Opposition was mailed to Applicant's former counsel of record who filed the application to register the subject mark. Applicant's undersigned counsel did not receive a copy of the Notice of Opposition until the Board's August 4, 2007, Order was issued.

Applicant's failure to file a timely Response was neglectful but was not in any manner willful. Applicant has prepared the attached Response and is prepared to have it filed if this motion is granted.

Opposer is not prejudiced by Applicant's failure to file its Response within 40 day of service because Applicant is not requesting an extension of the scheduling Order entered by the Board. Applicant will abide by all of the dates and deadlines established in this proceeding.

Finally, Applicant has a meritorious defense to the Opposition. Applicant was the first entity to use the subject mark and it is the owner of a similar registered mark for similar goods.

Accordingly, Applicant respectfully requests that its motion be granted and that the attached Response be filed in this proceeding.

/sherry flax/

Sherry H. Flax
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500 East Pratt Street
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(410) 332-8784

Attorney for Promgirl, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of August, 2007, a true and correct copy of the foregoing Applicant's Motion to Set Aside Default Judgment has been duly served by first class mail, postage prepaid, to Susan Goldsmith, 744 Broad St., Suite 1200, Newark, New Jersey 07102, attorney for Opposer.

/s/

Sherry H. Flax

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In re Appication of Promgirl, Inc.
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Applicant

APPLICANT'S RESPONSE TO NOTICE OF OPPOSITION

Applicant Promgirl, LLC, by its undersigned counsel, hereby responds to the Notice of Opposition ("Opposition") filed by Opposer Promgirl, Inc. to registration of the mark PROMGIRL, Serial No. 78/875592.

In response to the numbered paragraphs of the Opposition, Applicant states:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of the Opposition and therefore denies same

2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 of the Opposition and therefore denies same.

3. Applicant admits the truth of the allegations in Paragraph 3 of the Opposition.

4. Applicant admits the truth of the allegations in Paragraph 4 of the Opposition.

. 5. Applicant denies the allegations in Paragraph 5 of the Opposition.

6. Applicant denies the allegations in Paragraph 6 of the Opposition.

7. Applicant denies the allegations in Paragraph 7 of the Opposition.

8. Applicant denies the allegations in Paragraph 8 of the Opposition.

9. The allegations in Paragraph 9 of the Opposition are legal conclusions to which no responses are required. To the extent that Paragraph 9 may be construed to contain factual allegation, said allegations are denied.

FIRST AFFIRMATIVE DEFENSE

The Opposition fails to state a claim upon which relief can be granted.

Wherefore, Applicant prays that this Opposition be dismissed with prejudice and the registration of the mark shown in its application Serial No. 75/652,878 be granted.

Dated: August 31, 2007

Respectfully submitted,

/sherry flax/

Sherry H. Flax
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