

ESTTA Tracking number: **ESTTA183419**

Filing date: **12/27/2007**

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

Proceeding	91178987
Party	Defendant Big Apple Ideas, LLC
Correspondence Address	John Dailey Big Apple Ideas, LLC 4726 New Broad St # 202 Orlando, FL 32814 UNITED STATES john@jtdmail.com
Submission	Other Motions/Papers
Filer's Name	John T. Dailey
Filer's e-mail	john@jtdmail.com
Signature	/John T. Dailey/
Date	12/27/2007
Attachments	Serial 78922138 and Opposition 91178987 Motion and Affidavit.pdf (7 pages) (37629 bytes)

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

In the Matter of

APPLE INC,		Application Serial No.: 78/922138
		Opposition No.: 91178987
Opposer,		
vs.		
BIG APPLE IDEAS, LLC,		
Applicant		

MOTION TO SET ASIDE DEFAULT JUDGMENT

Applicant requests that the Trademark Trial and Appeal Board set aside the default judgment entered against the Applicant and mailed on November 27, 2007. This motion is brought in accordance with Fed. R. Civ. P. 55(c) and pursuant to Fed. R. Civ. P. 60(b)(1).

This motion is supported by the attached Affidavit of John T. Dailey for the Applicant.

Dated December 27, 2007



John T. Dailey for
Big Apple Ideas, LLC
Applicant

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

In the Matter of

APPLE INC,

Opposer,

vs.

BIG APPLE IDEAS, LLC,

Applicant

| Application Serial No.: 78/922138

| Opposition No.: 91178987

CERTIFICATE OF SERVICE

This is to certify that the foregoing Motion To Set Aside Default Judgment was served on Opposer by depositing a true and correct copy in the first class mail, postage pre-paid, addressed as follows:

Joseph Petersen, Esq.
Kilpatrick Stockton LLP
31 West 52nd Street -14th Floor
New York, NY 10019

Dated December 27, 2007



John T. Dailey for
Big Apple Ideas, LLC
Applicant

CERTIFICATE OF TRANSMITTAL

I hereby certify that a true copy of the foregoing Motion, Affidavit and Certificate is being filed electronically with the TTAB via ESTTA on this day December 27, 2007.

A handwritten signature in black ink, appearing to read "J. T. Dailey", is centered on the page. The signature is written in a cursive style with a horizontal line extending from the end.

John T. Dailey

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

In the Matter of

APPLE INC,		Application Serial No.: 78/922138
		Opposition No.: 91178987
Opposer,		
vs.		
BIG APPLE IDEAS, LLC,		
Applicant		

AFFIDAVIT

I, John Dailey, having been sworn and being under oath, allege as follows:

1. I am the sole member of Big Apple Ideas, LLC which is the Applicant in this proceeding before the Trademark Trial and Appeal Board of the United States Patent and Trademark Office.
2. On October 27, 2007, I mistakenly sent the Answer to the United States Patent and Trademark Office hearing officer. The Answer should have been instead sent to the Trademark Trial and Appeal Board. A copy of the Answer was sent to counsel for the Opposer at that same time. Counsel for the Opposer has previously acknowledged receiving the Answer in a timely fashion.
3. On November 21, 2007, after the aforementioned mistake was discovered, a copy of the Answer was sent to the Trademark Trial and Appeal Board. This was a true copy

of the Answer previously sent to both the United States Patent and Trademark Office hearing officer and Opposer's counsel.

4. A default judgment was entered against Big Apple Ideas, LLC for failure to file an Answer. The mailing date was November 27, 2007.
5. The parties have been involved in settlement negotiations and have resolved the issues in this proceeding. In addition, the parties have previously consented to extensions to facilitate these negotiations.
6. The Opposer consented to the amendments submitted on November 21, 2007. This has been stipulated in the Conditional Stipulation of Dismissal Without Prejudice which was submitted to the Board on December 27, 2007. Opposer's counsel prepared the Stipulation which accompanied electronic mail (email) correspondence indicating that the Opposer had also given its consent to the dismissal of the opposition without prejudice. The email correspondence indicated that it was sent by Opposer's counsel, Mr. Stephen Coates of Kilpatrick Stockton LLP on December 26, 2007 at 7:49 PM with a copy sent to Mr. Joseph Petersen of Kilpatrick Stockton LLP.
7. At no point did I engage in willful or bad faith conduct leading to default.
8. The Opposer will not be prejudiced by vacating this default judgment.

Dated December 27, 2007



John T. Dailey for
Big Apple Ideas, LLC
Applicant

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

In the Matter of

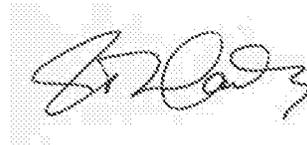
APPLE INC,		Application Serial No.: 78/922138
		Opposition No.: 91178987
Opposer,		
vs.		
BIG APPLE IDEAS, LLC,		
Applicant		

CERTIFICATE OF SERVICE

This is to certify that the foregoing Affidavit was served on Opposer by depositing a true and correct copy in the first class mail, postage pre-paid, addressed as follows:

Joseph Petersen, Esq.
Kilpatrick Stockton LLP
31 West 52nd Street -14th Floor
New York, NY 10019

Dated December 27, 2007



John T. Dailey for
Big Apple Ideas, LLC
Applicant

CERTIFICATE OF TRANSMITTAL

I hereby certify that a true copy of the foregoing Affidavit and Certificate is being filed electronically with the TTAB via ESTTA on this day December 27, 2007.

A handwritten signature in black ink, appearing to read "J. T. Dailey", is centered on the page. The signature is written in a cursive style with a horizontal line extending from the end.

John T. Dailey