

TTAB

Steve P. Woodard
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March 27, 2008

Via EXPRESS MAIL by the US Post Office to Addressee

BOX TTAB NO FEE
Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451 USA

Re: Opposition No. 91181985 to the Mark LABEL SN 77/191/593

Dear Sir/Madam,

Transmitted herewith is:

- 1) A Motion for Extension of Time to Answer without Consent
- 2) A formal Answer in the above Opposition

An identical copy of the above was sent via EXPRESS MAIL by the US Post Office to the Petitioner.

Thank you for your assistance in this matter.

Sincerely,



Steve P. Woodard
Applicant/Individual/US Citizen

Enclosures: Motion and Answer to Notice of Opposition
cc: Erik Pelton, Esq., Attorney for Opposer, Erik M. Pelton & Associates



03-27-2008

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

In the Matter of:
Trademark Application Serial No. 77/191,593
Published in the Official Gazette November 20, 2007
Mark: LABEL

JEFFREY GOLDSTEIN,

Opposer,

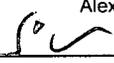
v.

STEVE P. WOODARD,

Applicant.

Express Mail label number EB984175434 US
I hereby certify that this correspondence is being
deposited with the United States Postal Service
'Express Mail Post Office To Addressee' service in an
envelope addressed to:

Attn: TTAB - NO FEE
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451


Steve P. Woodard

3/27/08
Date

Opposition No. 91181985

MOTION FOR EXTENSION OF TIME TO ANSWER WITHOUT CONSENT

Answer in the above captioned opposition was due on February 28, 2008.

Applicant hereby moves the Board to set aside Plaintiff's Motion for Default Judgment for the reasons that follow.

Applicant's untimely answer was inadvertent, and though Applicant received the Opposition, Applicant did not clearly understand the procedure. As a result, Applicant first realized this inadvertent error when Applicant saw Opposer's Motion for Default Judgment dated March 10, 2008.

In support of Applicant's Motion to set aside default judgment, please understand that the delay in filing an answer was not the result of willful conduct or gross neglect on the part of Applicant; Opposer will not be substantially prejudiced by the delay; and Applicant feels strongly that Applicant has a meritorious defense to the action. Furthermore, Applicant has not requested any other extension of time in this or any other matter before the TTAB.

Though Applicant understands the showing of a meritorious defense does not require an evaluation of the merits of the case, Applicant believes there is good cause for the Board to grant consent of an extension of time. A number of the DuPont Factors support Applicant's claim of a meritorious defense, and Applicant believes Opposer's notice of default should be set aside allowing Applicant time to answer.

Applicant's answer is enclosed. This Motion was sent via EXPRESS MAIL by the United States Post Office on March 27, 2008, therefore this request is for an extension of time to answer of 29 days later than the due date of February 28, 2008.

On March 25, 2008 Applicant requested the consent of Opposer to accept a late-filed answer of Applicant.

Attorney for Opposer promptly and courteously responded: "As we have already filed the Motion for Default Judgment, and you have admitted that a timely answer was not filed, we will not at this time agree to any extension or to withdraw the motion. It is quite possible that the Board will accept a late answer under appropriate circumstances in accordance with the Rules as defined in the Trademark Trial and Appeal Board Manual of Procedure (TBMP) (available at <http://www.uspto.gov/web/offices/dcom/ttab/tbmp/index.html>), but that is for the Board to decide."

WHEREFORE, Applicant, for good cause as shown herein, respectfully prays the Board grant consent to set aside Plaintiff's Motion for Default Judgment, and agrees it can accept Applicant's late-filed answer enclosed.

Dated: March 27, 2008

Respectfully submitted,

By: _____



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Certificate of Service

This is to certify that I, Steve P. Woodard, today served the above MOTION on the Opposer by Express Mail, addressed to Erik Pelton, Esq., Attorney for Opposer, Erik M. Pelton & Associates, PLLC, 1408 North Fillmore Street, Suite 2, Arlington, VA 22201
Tel: 703-525-8009

Dated: 3/27/08

By: 
Steve P. Woodard
Applicant

1. Applicant is without knowledge and information to form a belief as to the truth of allegations set forth in paragraph 1 and therefore denies the allegations.

2. Applicant admits only that the records of the U.S. Patent and Trademark office reveal Opposer's U.S. Trademark application to register LABEL NEW YORK in connection with "clothing and apparel; shirts; hooded sweatshirts; thermals." Applicant denies the allegation that the Mark of Applicant will cause likelihood of confusion with the Mark of Opposer, and therefore denies the allegation. In a pending Office Action regarding the mark of Opposer, the trademark examiner states: "The identification of goods is indefinite and must be clarified because the applicant's description contains unnecessary semi-colons and the wording "clothing and apparel, hooded sweatshirts and thermals" is vague."

3. Admit.

4. Admit. Furthermore, Applicant's SN 77/191,593 application for the mark LABEL reveals a filing date that is 128 days earlier than the application upon which Opposer relies.

5. Applicant is without knowledge and information to form a belief as to the truth of allegations set forth in paragraph 5 and therefore denies the allegations. Applicant was unable to find any use of Opposer's Mark by searching Google.

6. Applicant is without knowledge and information to form a belief as to the truth of allegations set forth in paragraph 6 and therefore denies the allegations.

7. Deny.

8. Deny.

9. Applicant is without knowledge and information to form a belief as to the truth of allegations set forth in paragraph 9 and therefore denies the allegations.

10. Applicant is without knowledge and information to form a belief as to the truth of allegations set forth in paragraph 10 and therefore denies the allegations.

11. Applicant is without knowledge and information to form a belief as to the truth of allegations set forth in paragraph 11 and therefore denies the allegations.

12. Applicant is without knowledge and information to form a belief as to the truth of allegations set forth in paragraph 12 and therefore denies the allegations.

13. Applicant is without knowledge and information to form a belief as to the truth of allegations set forth in paragraph 13 and therefore denies the allegations.

14. Applicant's mark was filed 1(b) Intent to Use, however, since the time of filing, Applicant has made a good faith effort to use and promote its Mark LABEL.

15. Admit.

16. Applicant is without knowledge and information to form a belief as to the truth of allegations set forth in paragraph 16 and therefore denies the allegations.

17. Applicant is without knowledge and information to form a belief as to the truth of allegations set forth in paragraph 17 and therefore denies the allegations.

18. Deny.

AFFIRMATIVE DEFENSES

19. Opposer fails to state a claim upon which relief can be granted.

20. The records of the USPTO contain numerous applications and registration for marks that contain the term 'label'.

21. LABEL is dissimilar to LABEL NEW YORK in sound, commercial impression, and connotation. The mark LABEL alone, without any

geographic location as is contained in the mark of Opposer, is fanciful when used for the goods listed in Applicant's application.

22. Applicant reserves the right to develop further defenses during the Discovery phase of the Opposition.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed in its entirety with prejudice, that the Board agrees a registration should be issued to Applicant for its trademark LABEL, and that the Trademark Trial and Appeal Board grant such other relief as it deems just and proper..

Dated: March 27, 2008

Respectfully submitted,

By: _____



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Dated: 3/27/08

By: 
Steve P. Woodard
Applicant