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

Proceeding	91190899
Party	Defendant Onsharp, Inc.
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Date	06/06/2012
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark Application Serial No. 77/645,273 for the ONSHARP Mark
Application Date January 7, 2009

Sharp Kabushiki Kaisha, A/t/a Sharp Corporation, Opposer, v. Onsharp, Inc., Applicant.	**Opposition No. 91190899**

MOTION TO SET ASIDE NOTICE OF DEFAULT AND ANSWER TO AMENDED PLEADING

MOTION TO SET ASIDE NOTICE OF DEFAULT

Onsharp, Inc. ("Onsharp") hereby moves and requests that the Board: (1) Withdraw the Notice of Default; and (2) Accept and Enter Onsharp's Answer for good cause to allow the parties to conclude settlement efforts.

SUMMARY

Extensions of Time have been granted until the Opposer filed the Motion to Amend Pleading/Amended Pleading. During the Extensions of Time and thereafter, the parties have been negotiating and Onsharp believes that the parties have come quiet close to an agreed settlement of the present Opposition. Onsharp's Answer to the Amended Pleading was due March 24, 2012. Onsharp failed to file its Answer due to on-going settlement discussions and inadvertence due to pro-se representation.

Opposer filed the motion to Amend Pleading on October 6, 2011. The Amended Pleading was attached to the Motion to Amend Pleading as an Exhibit to the Motion. On October 25, 2011 the proceeding was suspended pending the outcome of the outstanding Motion. During this time

Onsharp was in the process of taking over their representation in this matter and recorded the appearance of counsel on November 3, 2011. On February 23, 2012, the Response due date was set. Onsharp at this time, was waiting to be served the Amended Pleading.

ARGUMENTS

The standard for whether or not a default should be set aside is whether or not the defendant shows "good cause" according to Federal Rule of Civil Procedure 55. The standard for good cause, as determined by the Trademark Trial and Appeal Board is: (A) the delay in filing an answer was not the result of willful conduct or gross neglect on the part of the defendant, (B) the plaintiff will not be substantially prejudiced by the delay, and (C) the defendant has a meritorious defense to the action according to the Trademark Trial And Appeal Board Manual of Procedure § 312.02.

A. ONSHARP'S CONDUCT WAS NEITHER WILLFUL NOR GROSSLY NEGLIGENT

There is no willful or gross negligence on the part of Onsharp. Instead, Onsharp, who is currently represented pro-se, misunderstood, in good faith, "Exhibit A to Opposer's Motion for Leave to Amend Notice of Opposition" as support for the Motion to Amend, rather than the actual amended opposition. Onsharp understood the Motion for Leave to Amend Notion of Opposition as not requiring a response, rather *if granted*, Onsharp would then be served another Notice of Opposition.

The proceeding was suspended on October 25, 2011 pending the outcome of the Motion to Amend. Onsharp mistakenly believed that *if* the motion were granted, they would be served the Amended Notice of Opposition in light of the language of the Notice of October 25, 2011, namely the instruction that "The parties should not file any paper which is not germane to these motions."

In addition to confusion on Onsharp's part, Onsharp believed that no action was needed due to the insubstantial changes made to Exhibit A to, and discussed in, the motion. The only amendments made by Opposer were the addition of the phrase "before applicant's alleged use of the mark ONSHARP" in paragraph 2, and the addition of two registrations, Registration No. 2,765,106 and 2,756,747 to paragraph 3. Opposer proceeds to state in the Motion for Leave to

Amend Opposition, on page 4, that the "revised allegations are essentially an amplification of the same information in Opposer's original Notice of Opposition" and the "amendment does not propose any radical new theories of the case nor do the alleged facts significantly change". Accordingly, Onsharp's Answer to the Opposition, filed February 3, 2011 answers paragraphs 2 and 3 completely and Opposer's amendments do not alter Onsharp's answer to those paragraphs, or any other contained in the Answer, nor do they require any additional defenses.

In light of the facts discussed above, Onsharp mistakenly believed that the Amended Pleading had not been serviced and that the Motion thus required no response as any response that was not germane to the proceedings would not be required.

Onsharp believed that since no new allegations were made and that Opposer simply added language that was already implied by the filing of an Opposition, that no additional action was needed since there would be no change to Onsharp's original Answer.

Opposer did indicate that they wished to compel discovery and Onsharp understood this as requiring action separate from an answer to a motion to any amended pleading.

It is Onsharp's belief that there is no evidence that the failure to Answer was willful, and also no evidence that the defendant's conduct rises to the level of gross negligence. Onsharp's answer was due March 24, 2012 and the Notice of Default was mailed May 10, 2012. Onsharp is proactively filing an Answer with the Motion to Withdraw the Notice of Default. Onsharp is not waiting a significant amount of time to respond. A default judgement has not yet been entered. It is Onsharp's good faith belief that the failure to submit an Answer was inadvertent and based on a misunderstanding by a pro-se defendant.

B. OPPOSER NOT SUBSTANTIALLY PREJUDICED

Opposer will not be substantially prejudiced by any delay caused by the withdrawal of the Notice of Default. Opposer and Onsharp were working on a consent agreement and Opposer had even sent a potential Protective Order to Onsharp for review. A signed Protective Order was submitted to the Board on May 30, signed by Opposer. In Onsharp's view, this submission is an indication that Opposer is indeed willing, and even hopeful, that further negotiation of a consent agreement is forthcoming as that they are willing to keep working on an agreement. Since filing

of the Opposition, nine (9) Extensions of Time have been granted with consent of Opposer. During this time, both parties have been working together on an agreement.

Further, Opposer had only made minimal additions to their Amended Pleading. Opposer did not bring even a single new claim or allegation or even make any statement that changes or affects either party's position or course of action. In light of this, Opposer is not substantially prejudiced by entry of Onsharp's answer.

C. MERITORIOUS DEFENSE SATISFIED BY CONCURRENT ANSWER

Onsharp hereby submits its answer concurrently with this request to Withdraw the Notice of Default, as preferred in TBMP § 312.01. The plausible answer to the Amended Pleading that follows this Motion will satisfy the requirement that the defendant has a meritorious defense to the action as typically the submission of an answer indicates there is a meritorious defense. *Djeredjian v Kashi Co.*, 21 USPQ2d 1613, 1615 (TTAB 1991). Furthermore, the Answer being hereby submitted is verbatim to Onsharp's original Answer since the Amended Pleadings are "essentially an amplification of the same information in Opposer's original Notice of Opposition" according to page 4 of Opposer's Motion for Leave to Amend Notice of Opposition.

CONCLUSION

While both parties appreciate that the Board would like this matter to be concluded, Onsharp would like to provide the Board with additional information that will show the Board why the forgoing relief and suspension is warranted.

Notwithstanding that the present opposition has been ongoing for quite some time, neither party has engaged in any substantive discovery. Instead, both parties have focused on resolving the present dispute through a consent agreement. To this end, the parties have been negotiating a consent agreement, which Onsharp believes is close to completion.

By resolving the present proceeding through a consent and settlement, the need to utilize the Board's limited resources is thereby minimized.

Onsharp respectfully requests that the Board withdraw the Notice of Default and accept and enter the Answer to Amended Pleading filed concurrently herewith as this motion to set

aside notice of default is presented in good faith with good cause, was not unduly delayed, and unduly prejudices no one.

ANSWER TO AMENDED PLEADING

ANSWER

Onsharp, Inc. ("Onsharp") is a company organized under the laws of the State of North Dakota and having a principle place of business at 2214 Rose Creek Boulevard South, Fargo, North Dakota, 58104, and herewith answers the allegations contained within the Amended Pleading.

GENERAL DENIAL

Unless expressly admitted, Onsharp denies every allegation contained with the Notice of Opposition and Amended Opposition.

ANSWER TO ALLEGATION CONTAINED IN AMENDED OPPOSITION

1. Onsharp is without sufficient information to response to the allegations contained in paragraph 1 of the Amended Notice of Opposition, and therefore denies each and every allegation of paragraph 1 of the Amended Notice of Opposition.

2. Onsharp denies that the mark "SHARP" has become famous in the United States. Onsharp is without sufficient information to respond to the remaining allegations contained paragraph 2 of the Amended Notice of Opposition, and therefore denies each and every remaining allegation in paragraph 2 of the Amended Notice of Opposition.

3. While information from the United States Patent and Trademark Office website purports to indicate the Opposer is the owner of the registration set forth in paragraph 3 of the Amended Notice of Opposition, Onsharp has insufficient information to admit or deny the allegations contained in paragraph 3 of the Amended Notice of Opposition, and therefore denies each and every allegation contained in paragraph 3 of the Amended Notice of Opposition.

4. Denied.

5. Denied.

6. Denied.

7. Denied.

8. Denied.

9. Denied.

DEFENSES

10. Applicant contends, by way of denial of Opposer's allegations, that no likelihood of confusion is created.

11. Applicant specifically reserves the right to file additional Defenses and Counterclaims as the may become known.

WHEREFORE, Applicant prays;

1. That the Amended Notice of Opposition be dismissed in its entirety with prejudice.

2. That a registration on the Principal Register be issued to the Applicant for ONSHARP mark as set forth in Application Serial No. 77/645,273.

Respectfully,

Dated: 6-5-12

Joseph M. Sandin
President
Onsharp, Inc.
474 45th Street South
Fargo, North Dakota 58103
Telephone: (701) 356-9010
Facsimile: (701) 356-9011

CERTIFICATE OF SERVICE

I hereby certify that I am over 18 years of age and represent Applicant Onsharp, Inc. and that on June 5, 2012, a copy of the following documents:

I. MOTION TO SET ASIDE NOTICE OF DEFAULT

II. ANSWER

Were sent via First Class Mail, postage prepaid to:

Robert W. Adams
Sheryl De Luca
NIXON & VANDERHY, P.C.
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808

I certify under penalty of perjury that the forgoing is true and correct. Executed on June 5, 2012.

Joseph M. Sandin
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