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Filing date: **06/13/2012**

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

Proceeding	91204288
Party	Defendant Appneta, Inc.
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Submission	Reply in Support of Motion
Filer's Name	Kathryn Jennison Shultz
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Date	06/13/2012
Attachments	APPNETA reply_20120613133825.pdf ( 2 pages )(62058 bytes )

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

NETAPP, INC.,	:	
	:	
Opposer,	:	Opposition No. 91/204,288
	:	Serial No. 85/355,876
v.	:	Trademark APPNETA
	:	
APPNETA, INC.,	:	
	:	
Applicant.	:	

APPLICANT'S REPLY TO OPPOSER'S OPPOSITION TO APPLICANT'S MOTION  
FOR LEAVE TO FILE LATE ANSWER, OR IN THE ALTERNATIVE, MOTION TO  
STRIKE APPLICANT'S SO-CALLED AFFIRMATIVE DEFENSE FROM ITS  
PROPOSED ANSWER

Applicant Appneta, Inc., by new counsel, timely and completely responded to the show cause order issued by the Trademark Trial and Appeal Board on May 7, 2012.

In accordance with the standard for determining whether default judgment should be entered against the defendant for its failure to file a timely answer to the complaint, applicant showed, contrary to opposer's counsel's allegations, 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.

Applicant did not willfully or deliberately ignore any deadlines in the subject proceeding. Applicant did not intentionally fail to respond. Simple inadvertence is not gross neglect. When the inadvertent oversight was discovered, applicant, by its new counsel, timely responded to the show cause order.

Moreover, opposer has not been substantially prejudiced by the delay. In fact, it is the opposer who has unnecessarily delayed this proceeding by raising objection to

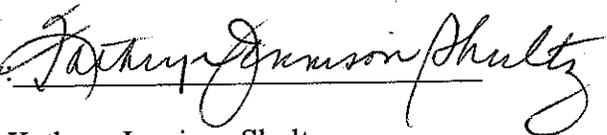
applicant's motion and has prolonged the delay by including a motion to strike applicant's affirmative defense. In order to prevent further delay, which is required when a motion is filed without consent, applicant hereby agrees to strike the affirmative defense from its answer.

Finally, applicant continues its intention to defend itself against the unsubstantiated allegations contained in the notice of opposition and maintains, as stated in its answer, that there is no likelihood of confusion between its trademark and the ones alleged by the opposer. As always, the burden of proof is with the opposer. Let them try to prove their case. Applicant firmly believes, based on the facts and the law, that the Board will find that there is no likelihood of confusion.

As a result, applicant respectfully requests the granting of its motion and will agree to strike the affirmative defense contained in its answer.

Respectfully submitted,

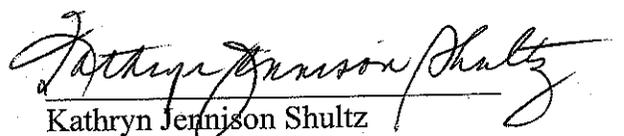
Date: June 13, 2012

By: 

Kathryn Jennison Shultz  
Jennison & Shultz, P.C.  
2001 Jefferson Davis Highway – Suite 1102  
Arlington, Virginia 22202  
Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing was served upon Opposer by mailing same via First Class Mail, postage prepaid, to Rochelle D. Alpert, Morgan, Lewis & Bockius LLP, One Market, Spear Street Tower, San Francisco, California 94105, this 13th day of June, 2012.

  
Kathryn Jennison Shultz