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

Proceeding	91206546
Party	Defendant Mexcor, Inc.
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Date	06/19/2013
Attachments	Motion_to_Set_Aside_Notice_of_Default.pdf(90935 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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The R.S. Lipman Company,

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Opposer,

v.

Opposition No. 91206546

Mexcor, Inc.,

Applicant.

MOTION TO SET ASIDE NOTICE OF DEFAULT

Applicant Mexcor, Inc. (“Applicant”) files this Motion to Set Aside Notice of Default.

1. The policy of the Trademark Trial & Appellate Board is to decide cases on their merits. The Board is “very reluctant to enter a default judgment for failure to file a timely answer” and will set aside a notice of default upon a party’s showing of good cause, resolving all doubts in favor of the defendant. TBMP § 312.02. As good cause why default judgment should not be entered against it, Applicant shows as follows:

2. The parties to this proceeding have filed multiple agreed requests for extensions and to suspend the proceedings. They have done so because for some months now they have been engaging in settlement negotiations, during which time they have exchanged drafts of settlement agreements and have appeared to be on the verge of settling the matter. For this reason, Applicant has in good faith delayed filing an answer in the proceeding.

3. At the same time, Applicant has become engaged in major litigation with a third party that Applicant believes may very well affect or even determine the outcome of this proceeding, should it not settle. On March 26, 2013, Diageo North America, Inc. (“Diageo”),

filed Cause No. 4:13-cv-00856 in the Southern District of Texas against Applicant for claims including trademark infringement, trademark dilution, and unfair competition arising out of Applicant's use of its CROWN CLUB formatives throughout the United States.

4. The Diageo Complaint describes Applicant's CROWN CLUB marks as "imitative" of the CROWN ROYAL mark and complains at length about the CROWN CLUB formatives' use of the word "CROWN." According to Diageo, Mexcor's use of "CROWN" is likely to cause confusion among consumers as to the CROWN CLUB products' affiliation with, sponsorship by, approval of, or association with CROWN ROYAL. Diageo seeks, among other things, a permanent injunction barring Mexcor from use of the "CROWN-formatives" and removal of all products including bearing that mark. Diageo also has asked the court to bar Mexcor from filing any future trademarks that incorporate the word "CROWN" and that all its registrations containing the word "CROWN" be cancelled.

5. If any of the relief sought by Diageo were to be granted, it would certainly have a bearing on this proceeding. This proceeding and the Opposition would be moot if a court ordered Applicant to cease using the "CROWN"-formatives—which would include the TENNESSEE CROWN mark—or if it cancelled Applicant's registrations. It is also possible Diageo and Applicant will reach a settlement. Given that Diageo's claims address Applicant's use of the CROWN-formatives nationwide, such a settlement, if reached, could very well have a bearing on this proceeding. Finally, if the case were to proceed to trial and Applicant prevailed, the court's decision would undoubtedly address issues related to Applicant's use of "CROWN," and that analysis would also likely have a direct bearing on this case.

6. For these reasons, should the Board grant Applicant's Motion to Set Aside Notice of Default, it is likely that Applicant would file a motion to suspend this proceeding and seek Opposer's consent to same.

7. In any event, the Diageo lawsuit has complicated Applicant's assessment of this proceeding, and for this reason, too, Applicant has delayed in filing its answer.

8. That said, assuming the Board grants this Motion to Set Aside Notice of Default, Applicant asks that the Board accept for filing Applicant's Answer and Counterclaim, which it is filing contemporaneously with this Motion.

WHEREFORE, Applicant respectfully requests that its Motion to Set Aside Notice of Default be in all respects granted and that the Board accept for filing its Answer and Counterclaim.

Dated: June 19, 2013.

Respectfully submitted,

/John A. Tang/

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Certificate of Service

This is to certify that a true and correct copy of the foregoing document was served upon all counsel of record via email and U.S. Mail in accordance with the Rules of the Trademark Trial and Appeal Board this 19th day of June, 2013 to:

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