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

Proceeding	91211193
Party	Plaintiff Home Box Office, Inc.
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Date	10/21/2013
Attachments	91211193 Oppos Resp-Oppos to App Resp to Board Not of Default.pdf(16999 bytes )

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

**In the Matter of Application Serial No. 85/710,271: H B O HELPING BROTHERS OUT  
Published in the *Official Gazette* of February 19, 2013**

HOME BOX OFFICE, INC.,	)	
	)	
Opposer,	)	
	)	Opposition No. 91211193
v.	)	
	)	
ANTONIO M. WADE, SR.	)	
	)	
	)	
Applicant.	)	

**OPPOSER’S RESPONSE AND OPPOSITION TO APPLICANT’S RESPONSE TO  
BOARD’S NOTICE OF DEFAULT**

Home Box Office, Inc. (“Opposer”) respectfully submits this response and objection to Applicant Antonio M. Wade, Sr.’s (“Applicant”) response to the Notice of Default issued against him on August 14, 2013. Applicant has failed to show good cause why judgment of default should not be entered against him nor has he filed an Answer, and accordingly Opposer requests that judgment be entered against Applicant and the Opposition be sustained.

**Applicant Has Not Shown Good Cause Why Judgment By Default Should Not Be Entered**

Fed. R. Civ. P. 55 provides that a court “may set aside an entry of default for good cause.” However, if an Applicant fails to file a response to the Notice of Default, or files a response that does not show good cause, default judgment may be entered against the Applicant.

TBMP 312.01.<sup>1</sup>

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<sup>1</sup> Good cause for discharging a default may be found if “(1) the delay in filing is not the result of willful conduct or gross neglect, (2) the delay will not result in substantial prejudice to the opposing party, and (3) the defendant has a meritorious defense.” *DeLorme Publishing Co v. Eartha’s Inc.*, 60 USPQ2d 1222, 1224 (TTAB 2000).

Opposer is not unsympathetic to the fact that Applicant is proceeding pro se. However, Applicant's "response" did not contain any justification or good cause for Applicant's failure to file a timely answer to the Notice of Opposition. Notably, Applicant did not deny being served with the Notice of Opposition, nor did he deny that he received a copy of the Notice of Opposition and the Board's scheduling order, which clearly set forth the deadline for an Answer. Applicant simply included an "apology" for filing late and stated that he "simply lost track of the filing deadline" and has "not lost interest in registering" his mark. However, such statements are not sufficient to constitute good cause for why such delay should be excused. The failure to respond need not have been done in bad faith, but rather Applicant's failure to respond, despite having notice of the deadline, is sufficient to support a finding that Applicant acted willfully, thus precluding a showing of good cause to overcome the default. *See, e.g., CJC Holdings Inc. v. Wright & Lato Inc.*, 979 F.2d 60, 25 USPQ2d 1212, 1215 (5th Cir. 1992) (defendant's failure to open certified mail envelope containing summons and complaint held to be willful behavior which did not support reversal of default); *Marziliano v. Heckler*, 728 F.2d 151, 156 (2d Cir. 1984) (failure to timely respond after knowledge of deadline supports finding of willfulness).

Applicant failed to file an Answer with his purported response to the Notice of Default and has yet to file an Answer. Since no extension of the time to Answer was granted, Applicant has not cured the default, nor has he sought an extension of time within which to do so, nor has he shown that he has a meritorious defense. *c.f. Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc., d.b.a., Parfums Gianelli*, 1991 TTAB LEXIS 45 (Trademark Trial & App. Bd. Nov. 7, 1991) ("by the submission of an answer which is not frivolous, applicant has adequately shown that it has a meritorious defense").

**WHEREFORE**, Opposer respectfully requests that a judgment of default be entered against Applicant, this opposition be sustained, and that Application Serial No. 85/710,271 be denied registration.

Date: October 21, 2013

LOEB & LOEB LLP

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*Attorneys for Opposer  
Home Box Office, Inc.*

**CERTIFICATE OF SERVICE**

I, Angela Ocasio Provencio, hereby certify that a copy of this **OPPOSER'S RESPONSE AND OPPOSITION TO APPLICANT'S RESPONSE TO BOARD'S NOTICE OF DEFAULT** has been served upon:

ANTONIO M. WADE SR..  
19 CARTERS GROVE CT  
SILVER SPRING, MARYLAND 20904-6629

via first class mail, postage prepaid, on this 21st day of October, 2013.

/s/Angela Ocasio Provencio