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

Proceeding	91211392
Party	Defendant Hallmark Industries, Inc.
Correspondence Address	HALLMARK INDUSTRIES INC 800 31ST STREET UNION CITY, NJ 07087 UNITED STATES PKJAIN2@HALLMARK-JEWELRY.COM
Submission	Other Motions/Papers
Filer's Name	Matthew H. Swyers
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Signature	/Matthew H. Swyers/
Date	05/23/2014
Attachments	Motion to Set Aside Default.pdf(98286 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**The Trademark Trial and Appeal Board**

In the Matter of Serial No. 77/457,422  
For the mark HALLMARK

Hallmark Licensing, LLC,	:	
	:	
Opposer,	:	
	:	
vs.	:	Opposition No. 91211392
	:	
Hallmark Industries Inc.,	:	
	:	
Applicant.	:	

**MOTION TO SET ASIDE DEFAULT**

COMES NOW the Applicant, Hallmark Industries Inc. (hereinafter “Applicant”), by counsel, and submits the instant Motion to Set Aside Default pursuant to TBMP § 312.02 and with good cause shown respectfully requests that the Board set aside the Notice of Default and accept the attached Notice of Appearance in this matter. In support thereof Applicant states as follows:

**STATEMENT OF THE CASE**

1. On or about July 3, 2013 Hallmark Licensing, LLC (“Opposer”) instituted the instant proceeding against the registration of Applicant’s HALLMARK mark.
2. On or about August 7, 2013 Applicant filed its Answer and Grounds of Defense.
3. On or about February 10, 2014 Applicant’s attorney filed its Request for Permission to Withdraw Representation.
4. On or about February 18, 2014 Opposer filed a Motion for Suspension in View of Civil Proceeding with Consent.

5. On February 18, 2014 the Board granted Opposer's motion to suspend the proceeding pending the determination of a civil action, with consent.

6. On March 5, 2014 the Board granted Applicant's attorney's request to withdraw. Additionally, the Board gave Applicant thirty days from the mailing date of the order to appoint new counsel, or to file a paper stating the Applicant chooses to represent itself.

7. Applicant failed to timely inform the Board of its intent to continue forward with the case or to have a substitute attorney file a Notice of Appearance.

### **RESPONSE**

Good cause why default judgment should not be entered against a defendant, for failure to file a timely answer, is usually found when the defendant shows that (1) the delay in filing 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. TBMP § 312.02.

The determination of whether default judgment should be entered against a party lies within the sound discretion of the Board. In exercising that discretion, the Board must be mindful of the fact that it is the policy of the law to decide cases on their merits. Accordingly, the Board is very reluctant to enter a default judgment for failure to file timely, and tends to resolve any doubt on the matter in favor of the defendant. TBMP § 312.02.

In the instant case Applicant inadvertently lost track of the deadline to file a response in the instant matter and was not aware that the same had passed until after the deadline. Applicant has now secured new counsel as evidenced by the instant pleading and Notice of Appearance. As such, it is submitted that good cause be established in this matter as to why the default should

be set aside on the basis of Applicant's inadvertent lapse in not having the response filed in a timely manner.

It is respectfully submitted that the instant oversight was not as a result of willful conduct or gross neglect on the part of the Applicant but rather a calendaring error. Moreover, it is submitted that the Opposer would not be prejudiced whatsoever by the instant setting aside of the default at issue as the simple delay at issue is not sufficient to warrant a finding of prejudice in this regard.

In regard to a meritorious defense, for the purposes of completeness the Applicant has attached an Appearance of Counsel which it moves the Board to accept as late given the good cause shown herein. See Exhibit 1.

WHEREFORE for good cause considered, the Applicant, by counsel, respectfully requests that the Board accept the attached Appearance of Counsel in this matter.

Respectfully submitted this 23<sup>rd</sup> day of May, 2014.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/

Matthew H. Swyers, Esq.

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Counsel for Applicant

## EXHIBIT 1

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
The Trademark Trial and Appeal Board**

In the Matter of Serial No. 77/457,422  
For the mark HALLMARK

Hallmark Licensing, LLC,	:	
	:	
Opposer,	:	
	:	
vs.	:	Opposition No. 91211392
	:	
Hallmark Industries Inc.,	:	
	:	
Applicant.	:	

**APPEARANCE OF COUNSEL**

COMES NOW Applicant, Hallmark Industries Inc., and hereby requests that the United States Patent and Trademark Office and, specifically, The Trademark Trial and Appeal Board recognize Applicant's new power of attorney in Matthew H. Swyers, Esquire, The Trademark Company, PLLC, 344 Maple Ave., West, Suite 151, Vienna, VA 22180, (800) 906-8626.

The Applicant requests that all correspondence in this matter henceforth be sent to:

Matthew H. Swyers, Esquire  
The Trademark Company, PLLC  
344 Maple Avenue West, Suite 151  
Vienna, VA 22180  
Tel. (800) 906-8626  
Facsimile (270) 477-4574  
mswyers@TheTrademarkCompany.com

Communication via email with The Trademark Company, PLLC via the above-referenced email addressed is hereby expressly authorized. All previous powers of attorney are hereby revoked.

Respectfully submitted this 23<sup>rd</sup> day of May, 2014.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/

Matthew H. Swyers, Esq.

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