

ESTTA Tracking number: **ESTTA565006**

Filing date: **10/15/2013**

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

Proceeding	91211687
Party	Defendant Anne Sophie, Inc. DBA Emperia
Correspondence Address	ANNE SOPHIE INC 2050 E 49TH STREET VERNON, CA 90058-2802 UNITED STATES Lee@Emperiahandbags.com
Submission	Other Motions/Papers
Filer's Name	Cameron Hopkins
Filer's e-mail	cameron@hoplawfirm.com
Signature	/s/ Cameron Hopkins
Date	10/15/2013
Attachments	Anne Sophie motion to set aside default.pdf(293930 bytes )

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

In the Matter of:  
Application Serial No. 85/645,701  
Published in the *Official Gazette*  
January 22, 2013

RIVER LIGHT V, L.P.,

Opposer,

v.

ANNE SOPHIE, INC. d/b/a EMPERIA;

Applicant.

Opposition No. 91211687

MOTION TO SET ASIDE ENTRY OF  
DEFAULT; DECLARATIONS OF JAMES LI  
AND CAMERON HOPKINS, ESQ. IN  
SUPPORT THEREOF; [PROPOSED  
ANSWER]

FRCP 55(c), and TBMP §§ 312.01, 312.02

**I. INTRODUCTION**

Anne Sophie, Inc. DBA Emperia (“Anne Sophie”) filed its application for its mark

consisting of a stylized “T” on June 7, 2012:



. The mark was then assigned Serial No.

85/645,701 and published in the Official Gazette on January 22, 2013. Two oppositions to the Mark have been filed. As to the first opposition, Anne Sophie received Notice of the Opposition and Trial Dates, retained counsel, and timely filed its answer. As to the second, and present opposition, Anne Sophie did not receive Notice of the Opposition and Trial Dates. In fact, Anne Sophie first became aware of the second opposition only after receiving the Notice of Default.

Anne Sophie respectfully asks the Court to set aside the entry of default pursuant to Federal Rule of Civil Procedure (“FRCP”) 55(c), and Trademark Trial And Appeal Board Manual Of Procedure (“TBMP”) §§ 312.01, 312.02. Good cause exists for granting Anne Sophie’s request because (1) the delay in filing an answer was not the result of willful conduct or gross neglect on the part of the Anne Sophie, (2) River Light V, L.P. (“Riverlight”) will not be

substantially prejudiced by the delay, and (3) the Anne Sophie has a meritorious defense to the action.

Additionally, granting Anne Sophie's Motion is in line with the Board's liberal construction of FRCP 55(c).

Anne Sophie's proposed answer is attached hereto as Exhibit 1 (following the Declarations of James Li and Cameron A. Hopkins, Esq.).

## **II. STATEMENT OF FACTS**

Anne Sophie filed its application for its mark consisting of a stylized "T" on June 7, 2012. The mark was then assigned Serial No. 85/645,701 and published in the Official Gazette on January 22, 2013. Two oppositions to the Mark have been filed.

### **A. Anne Sophie Answered the First Opposition.**

The first opposition was filed on May 22, 2013, by The University of Tennessee as proceeding number 91210740 ("U of T Opposition"). Anne Sophie received Notice of the U of T Opposition by mail and, shortly thereafter, retained counsel, the Law Offices of Cameron A. Hopkins, PC ("Hopkins Firm"), to represent Anne Sophie in defending the U of T Opposition. [Declaration of James Li ("Li Decl."), ¶ 4]. On June 29, 2013, the Hopkins Firm then filed a Notice of Change in Correspondence Address reflecting that the Hopkins Firm was the appropriate address for the U of T Opposition Proceeding. [Declaration of Cameron A. Hopkins, Esq. ("Hopkins Decl."), ¶ 5]. The parties involved in the U of T Opposition Proceeding are currently engaged in settlement discussions. [Hopkins Decl., ¶ 6]. To this end, the parties stipulated, and on September 26, 2013, the Court granted, the parties' stipulated request to continue all dates in the U of T Opposition proceedings by 90 days. [Id.].

**B. Anne Sophie Did Not Receive Notice of the Second Opposition.**

The second, and current, opposition was filed on July 22, 2013, by River Light V, L.P. as proceeding 91211687 (“Riverlight Opposition”). [Hopkins Decl., ¶ 7]. For unknown reasons, Anne Sophie did not receive notice of the Riverlight Opposition until it received the Notice of Default by mail on or about September 22, 2013. [Li Decl., ¶ 6]. Anne Sophie then retained the Hopkins Firm for representation in the Riverlight Opposition and forwarded the Notice of Default. [Li Decl., ¶ 7]. Anne Sophie has looked into the matter and cannot determine why it did not receive the notice of filing of opposition and trial dates which, according to the docket, was mailed on July 22, 2013 to its corporate address. [Id.]. Anne Sophie has invested substantial time and effort in pursuing the registration of its Mark. [Li Decl., ¶ 8]. If Anne Sophie had received the notice of filing, it most assuredly would have filed a timely answer just as it did in the U of T Opposition proceeding. [Id.].

**III. LEGAL ARGUMENT**

**A. There is Good Cause for Setting Aside the Entry of Default.**

The standard for whether or not a default should be set aside is whether or not the Applicant shows “good cause.” *FRCP* 55. The standard for good cause, as determined by the TTAB, is: (1) the delay in filing an answer was not the result of willful conduct or gross neglect on the part of the Applicant, (2) the Opposer will not be substantially prejudiced by the delay, and (3) the Applicant has a meritorious defense to the action. *TBMP* § 312.02. There is good cause to set aside the entry of default in this proceeding.

First, there is no willful or gross neglect on the part of the Applicant. For some unknown reason, Anne Sophie simply did not receive notice of the Riverlight Opposition until it received the Notice of Default. *Paolo’s Associates Limited Partnership v. Paolo Bodo*, 21 USPQ2d 1899,

(if there is no evidence that failure was willful, then default should be set aside); *DeLorme Publishing Co v. Eartha's Inc.*, 60 USPQ2d 1222, 1557 (intentional failure to file an answer within six months after receiving notice constituted gross neglect).

Second, River Light will not be substantially prejudiced by the delay. As of the date of this filing, Anne Sophie's Answer is only six weeks late. River Light should not have incurred any expenses associated with the late-filing as it did not have to bring a motion for entry of default. Anne Sophie is more than willing to stipulate to a continuance of discovery and trial-related dates to accommodate River Light, as necessary.

Third, Anne Sophie has a meritorious defense to the action. Typically, the submission of an answer is considered satisfactory for satisfying there is a meritorious defense. *Djeredjian v. Kashi Co.*, 21 USPQ2d 1613, 1615 (TTAB 1991) (the two other factors having been shown, Applicant was allowed time to show meritorious defense by submission of answer). Furthermore, "the showing of a meritorious defense does not require an evaluation of the merits of the case. All that is required is a plausible response to the allegations in the complaint." *DeLorme, supra* at 1224. Anne Sophie hereby submits its answer concurrently with the Motion as preferred in *TBMP* § 312.01.

**B. FRCP Rule 55 Should be Liberally Applied to this Case.**

*FRCP 55* is to be liberally construed in order to provide relief from onerous consequences of defaults and default judgments, to provide relief from the onerous consequences of such an entry, and with any doubt being resolved in favor of setting aside. *Tolson v. Hodge*, 411 F.2d 123 (N.C. 1969); *Barber v. Turberville*, 218 F.2d 34; *Horn v. Intelectron Corp.*, 294 F.Supp. 1153 (S.D.N.Y.1968); *Singer Co. v. Greever and Walsh Wholesale Textile, Inc.*, 82 F.R.D. 1 (E.D.Tenn.1977); *Johnson v. Harper*, 66 F.R.D. 103 (D.C.Tenn.1975); *Hamilton v. Edell*, 67

F.R.D. 18 (E.D.Pa.1975).

*TBMP* § 312.01 likewise states:

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 a timely answer, and tends to resolve any doubt on the matter in favor of the Applicant.

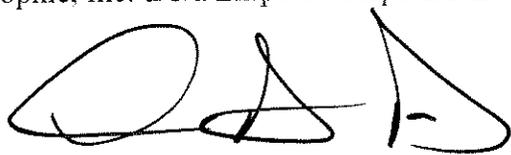
Accordingly, the Board should liberally construe the statute in this instant matter and grant the Motion, so that the opposition may be litigated on its merits as is preferred under the law.

#### IV. CONCLUSION

For the foregoing reasons, the Motion should be granted, the default set aside, and Applicant's Proposed Answer accepted.

Respectfully submitted,

Anne Sophie, Inc. d/b/a Emperia Corporation

By: 

Cameron A. Hopkins, Esq.  
Law Offices of Cameron A. Hopkins, PC  
865 S. Figueroa Street, Suite 1388  
Los Angeles, California 90017  
(213) 892-9957  
Attorneys for Applicant

Date: October 15, 2013

## DECLARATION OF JAMES LI

I, James Li, hereby declare:

1. I am an adult residing in Los Angeles County, California. I make this declaration based on personal knowledge except as to those matters which are stated on information and belief. If called as a witness, I could competently testify as to the matters set forth herein.

2. I am a principal of Applicant, Anne Sophie, Inc. d/b/a Emperia ("Anne Sophie"). I make this declaration in support of Anne Sophie's Motion to Set Aside Entry of Default.

3. Anne Sophie filed its application for its mark consisting of a stylized "T" on June 7, 2012: . The mark was then assigned Serial No. 85/645,701 and published in the Official Gazette on January 22, 2013. Two oppositions to the mark have been filed.

4. The first opposition was filed in May, 2012, by The University of Tennessee and Anne Sophie received notice of the opposition and trial dates by mail. Anne Sophie then retained counsel, the Law Offices of Cameron A. Hopkins, PC ("Hopkins Firm"), to represent Anne Sophie in defending the U of T Opposition.

5. Anne Sophie and The University of Tennessee are currently engaged in settlement discussions.

6. The second opposition was apparently filed on July 22, 2013 by River Light V. L.P.. For unknown reasons, Anne Sophie did not receive notice of River Light's Opposition until it received the Notice of Default by mail on or about September 22, 2013.

7. Anne Sophie then retained the Hopkins Firm for representation in the River Light Opposition and forwarded the Notice of Default. I have personally looked into the matter and cannot determine why Anne Sophie did not receive the notice of filing of opposition and trial dates which, according to the docket, was mailed on July 22, 2013 to its corporate address.

8. Anne Sophie has invested substantial time and effort in pursuing the registration of its Mark. If Anne Sophie had received the notice of filing, I would have most assuredly filed a timely answer just as I did in the U of T Opposition proceeding.

9. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: October 15, 2013



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James Li

## DECLARATION OF CAMERON A. HOPKINS, ESQ.

I, Cameron A. Hopkins, Esq., hereby declare:

1. I am an adult residing in Los Angeles County, California. I make this declaration based on personal knowledge except as to those matters which are stated on information and belief. If called as a witness, I could competently testify as to the matters set forth herein.

2. I am the principal attorney for the Law Offices of Cameron A. Hopkins, PC (“Hopkins Firm”). The Hopkins Firm represents Applicant, Anne Sophie, Inc. d/b/a Emperia (“Anne Sophie”), in the its Application and in the two Opposition proceedings filed against Anne Sophie. I make this declaration in support of Anne Sophie’s Motion to Set Aside Entry of Default.

3. Anne Sophie filed its application for its mark consisting of a stylized “T” on June 7, 2012: . The mark was then assigned Serial No. 85/645,701 and published in the Official Gazette on January 22, 2013. Two oppositions to the mark have been filed.

4. The first opposition was filed in May, 2012, by The University of Tennessee (“U of T Opposition”). Anne Sophie retained the Hopkins Firm to represent Anne Sophie in defending the U of T Opposition.

5. On June 29, 2013, the Hopkins Firm then filed a Notice of Change in Correspondence Address reflecting that the Hopkins Firm was the appropriate address in the U of T Opposition Proceeding.

6. The parties involved in the U of T Opposition Proceeding are currently engaged in settlement discussions. To this end, the parties stipulated, and on September 26, 2013, the Court granted, the parties’ stipulated request to continue all dates in the U of T Opposition proceedings by 90 days.

7. The second, and current, opposition was filed on July 22, 2013, by River Light V, L.P. as proceeding 91211687 (“Riverlight Opposition”). I am informed that for unknown reasons, Anne Sophie did not receive notice of the Riverlight Opposition until it received the Notice of Default by mail on or about September 22, 2013.

8. Anne Sophie has retained the Hopkins Firm for representation in the Riverlight Opposition.

9. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: October 15, 2013

A handwritten signature in black ink, appearing to read 'Cameron A. Hopkins', written over a horizontal line.

Cameron A. Hopkins, Esq.

## **EXHIBIT 1**

## APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

Applicant, ANNE SOPHIE, INC. d/b/a Emperia Corporation, for its answer to the Notice of Opposition filed by Opposer RIVER LIGHT V, L.P., against application for registration of ANNE SOPHIE, INC. d/b/a Emperia Corporation trademark, Serial No. 85/645,701 filed June 7, 2012, and published in the Official Gazette of January 22, 2013, pleads and avers as follows:

Applicant admits that it is the owner of the Application. Applicant denies that Opposer will be damaged by a grant of registration to Applicant. Applicant is without knowledge or information sufficient to answer the remaining allegations contained in the preface to Opposer's Opposition and, upon that basis, denies the allegations contained therein in their entirety;

1. Answering paragraphs 1-9 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

2. Answering paragraphs 10-11 of the Notice of Opposition, Applicant admits the allegations thereof.

3. Answering paragraphs 12-18 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

### AFFIRMATIVE DEFENSES

Applicant pleads the following Affirmative Defenses to the Opposition:

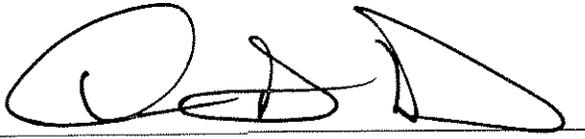
4. The Opposition fails to state a claim on which relief can be granted.
5. Applicant further affirmatively alleges that as a result of its continuous substantial usage of its mark since February 15, 2012, this mark is a valuable asset of Applicant and carries considerable goodwill and consumer acceptance of its products sold under the mark. Such goodwill and widespread usages has made the mark distinctive to the Applicant.

6. Applicant further affirmatively alleges that there is no likelihood of confusion, mistake or deception, because, *inter alia*, Applicant's mark and the pleaded mark of Opposer are not confusingly similar. While both the Applicant's and Opposer's marks contain the letter "T", Applicant's mark is stylized and, therefore, is distinctive from Opposer's mark.

7. Applicant further alleges that there is no likelihood of dilution because Opposer's and Applicant's marks are not sufficiently similar; neither Applicant nor Applicant's predecessors in interest intended any association with Opposer's marks or any of them; and upon information and belief, ordinary prospective purchasers of Applicant's products do not associate Applicant's and Opposer's marks.

Respectfully submitted,

Anne Sophie, Inc. d/b/a Emperia Corporation

By: 

Cameron A. Hopkins, Esq.  
Law Offices of Cameron A. Hopkins, PC  
865 S. Figueroa Street, Suite 1388  
Los Angeles, California 90017  
(213) 892-9957  
Attorneys for Applicant

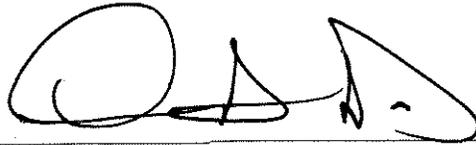
Date: October 15, 2013

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing **Applicant's Motion to Set Aside Entry of Default; Declarations of James Li and Cameron A. Hopkins, Esq. in Support Thereof; [Proposed Answer]** has been served on opposing counsel by mailing said copy on October 15, 2013, via First Class Mail, postage prepaid to:

Mary L. Grieco  
Safia A. Anand  
Olshan Frome Wolosky, LLP  
Park Avenue Tower, 65 East 55<sup>th</sup> Street  
New York, NY 10022  
Attorneys for Opposer

Date: October 15, 2013

A handwritten signature in black ink, appearing to read 'Cameron A. Hopkins', written over a horizontal line.

Cameron A. Hopkins