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

Proceeding	91214874
Party	Defendant Abir Anwar
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Submission	Response to Board Order/Inquiry
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Date	05/02/2014
Attachments	Final Response to Notice of Default.pdf(290317 bytes )

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

LORILLARD LICENSING COMPANY, LLC,

Opposer,

vs.

ABIR ANWAR

Applicant.

OPPOSITION NO.: 91214874

Application Serial No. 85/932156

**RESPONSE TO NOTICE OF DEFAULT**

Abir Anwar (“Applicant”), through its undersigned attorney, hereby sets forth his Response to the Board’s Notice of Default as follows:

1. Applicant respectfully requests that the Board set aside its Notice of Default because Applicant can show good cause why judgment by default should not be entered against Applicant.
2. Good cause for discharging a default is generally 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.<sup>1</sup> The Board should analyze these factors in conjunction with policy that the law strongly favors determination of cases on their merits.<sup>2</sup> “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 defendant.”<sup>3</sup>

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<sup>1</sup> Fred Hayman Beverly Hills Inc. v. Jacques Bernier Inc., 21 USPQ2d 1556 (TTAB 1991).

<sup>2</sup> CTRL Systems Inc. v. Ultraphonics of North America Inc., 52 USPQ2d 1300, 1301 (TTAB 1999).

<sup>3</sup> TBMP § 312.02.

3. After Applicant received notice of this Opposition, Applicant started researching and interviewing trademark attorneys to represent him in this matter.<sup>4</sup> Applicant retained the undersigned counsel on April 17, 2014, and at that time, counsel advised Applicant that the deadline to file an Answer had passed. Prior to his retention of the undersigned counsel, Applicant was unaware that the deadline to file an Answer had passed.<sup>5</sup>

4. Applicant's delay in filing an Answer was inadvertent and not the result of willful conduct or gross neglect on the part of Applicant. Applicant has filed his Answer contemporaneously with this Response, thus Opposer will not be substantially prejudiced by the delay. As set forth in Applicant's Answer, Applicant denies that there is any potential likelihood of confusion between Applicant and Opposer's trademarks.

5. Thus, Applicant requests that the Board set aside its Notice of Default and allow this Opposition to proceed on the merits.

### **CONCLUSION**

6. For the foregoing reasons, Applicant requests that the Notice of Default be set aside and that Applicant be granted any other relief to which he is entitled.

Respectfully submitted,



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**COUNSEL FOR APPLICANT**

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<sup>4</sup> Declaration of A. Anwar ¶ 3.

<sup>5</sup> Id. ¶ 4.

**CERTIFICATE OF SERVICE**

I hereby certify that on May 2, 2014 a true and correct copy of the foregoing document was served on Opposer's counsel at the following address:

First Class Mail

Eric T. Fingerhut  
Shannon M. McKeon  
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300 North Greene Street, Suite 1601  
Greensboro, NC 27401



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Christianne Edlund

**U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE**

**DECLARATION UNDER 37 C.F.R. § 2.20**

Mark: TRU-VAPOR – Serial. No. 85932156  
Cancellation Proceeding No. 91214874

**DECLARATION OF ABIR ANWAR**

**STATE OF TEXAS**

**COUNTY OF DALLAS**

I, Abir Anwar, declare that the foregoing is true and correct:

1. I am over 18 years old and of sound mind, I make this declaration based on my own personal knowledge, and I am familiar with the facts of these proceedings.
2. I am the owner of the trademark TRU-VAPOR, as reflected in U.S. Trademark Application number 85932156.
3. After I received notice of the Opposition proceeding, I started researching and interviewing trademark attorneys to represent me in this matter. When I started looking for legal counsel, I was not aware of the deadline to file an Answer to this proceeding.
4. I retained Mullin Russ Kilejian PC on April 17, 2014 to represent me in this proceeding. My attorney at Mullin Russ Kilejian informed me of the notice of default, and I requested my attorney to help correct the oversight.
5. The delay in filing my Answer to this opposition proceeding was completely inadvertent and was not at all intentional.

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares

that the facts set forth in this Declaration are true; also statements made of his own knowledge are true, and all statements made on information and belief are believed to be true.

By:   
Abir Anwar