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

Proceeding	91218260
Party	Plaintiff Maurice D. Landers
Correspondence Address	MAURICE LANDERS 30-80 33RD ST 3RD FLOOR ASTORIA, NY 11102 UNITED STATES mauricelanders@yahoo.com
Submission	Motion for Relief from entry of Default Judgment
Filer's Name	Maurice D Landers
Filer's e-mail	mauricelanders@yahoo.com
Signature	/Maurice D Landers/
Date	05/18/2016
Attachments	Motion to Vacate.pdf(238755 bytes) Declaration Maurice D Landers.pdf(133386 bytes) Exhibit A.pdf(219535 bytes) Exhibit B.pdf(186305 bytes)

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

Maurice D. Landers,
Opposer,
v. Jack and Jill Foundation Limited,
Applicant.

Opposition No. 91218260
Mark: THE SHAMROCK FUND
Application Ser. No. 79107704

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

P.O. Box 1451

Alexandria, VA 22313-1451

MOTION TO SET ASIDE OR VACATE DEFAULT JUDGEMENT

Pursuant to Fed. R. Civ. P. 55(c) and 60(b), as made applicable by 37 CFR § 2.116(a), Opposer Maurice D. Landers representing itself will move the TTAB for an order vacating the default judgement entered against it on April 28th, 2016, on the grounds set forth in subsection (1) of Fed. R. Civ. P. 60(b) i.e. mistake, inadvertence, surprise, or excusable neglect.

I

STATEMENT OF FACTS

Applicant filed a motion for summary judgement on March 7, 2016, which was subsequently granted as conceded on April 28, 2016, and the opposition dismissed with prejudice.

Opposer was unaware that it had to reply to Applicant's motion for summary judgement (filed March 7, 2016) without notification from the TTAB.

II

LEGAL ARGUMENT

In the TTAB Manual of Procedure, under 528.01 General Nature of Motion: A party moving for summary judgment should specify, in its brief in support of the motion, the material facts that are undisputed. The nonmoving party, in turn, should specify, in its brief in opposition to the motion, the material facts that are in dispute. [Note 16.]

If you compare this to TTAB Manual of Procedure 528.02 Time for Filing Motion: When a motion for summary judgment is filed, a brief in response, or a motion under Fed. R. Civ. P. 56(d) of the Federal Rules of Civil Procedure, must be filed within 30 days from the date of service of the motion. A reply brief, if any, must be filed within 15 days from the service date of the brief in response. The time for filing a reply brief will not be extended. [Note 9.] The time for filing a responsive brief may be extended, but the time for filing a motion under Fed. R. Civ. P. 56(d) in lieu thereof, will not be extended. See TBMP § 528.06.

Parties are encouraged to contact the assigned Board attorney when a cross-motion for summary judgment is filed so that the Board attorney may issue an appropriate order clarifying brief due dates and page limits. [Note 10.] See TBMP § 528.01

It is unclear that the brief in response referred to in 528.02 refers to the nonmoving party because unlike 528.01, there is no mention of the nonmoving party. There has to be reasonable clarity from one subchapter to another for each to be read and understood without reference to the other (528.02 is referenced independently, not conditional on 528.01 since it can be cited independently). Since anyone is allowed to represent themselves without legal representation (Patent and Trademark Rule 11.14), the TTAB Manual of Procedure should be written so that it is easily understood not only by lawyers but also by those not in the legal profession i.e. not solely legalese language. One of the definitions of the word legalese is “the formal and technical language of legal documents that is often hard to understand.” Source - Google. If non-lawyers are allowed to represent themselves, then the language used in the TTAB Manual of Procedure should not discriminate between lawyers and non-lawyers.

528.03: Once the Board has suspended proceedings in a case pending the determination of a motion for summary judgment, no party should file any paper that is not germane to the motion. [Note 5.] Examples of papers which are or may be germane to a motion for summary judgment include a brief in opposition to the summary judgment motion, a motion for an extension of time in which to respond to the summary judgment motion, a motion under Fed. R. Civ. P. 56(d) for discovery needed to enable the nonmoving party to respond to the summary judgment motion, a cross-motion for summary judgment, a motion for leave to amend a party’s pleading or a motion to amend or withdraw requests for admissions. [Note 6.] See TBMP § 507 (Motion to Amend Pleading), TBMP § 509 (Motion to Extend Time), TBMP § 525 (Motion to Withdraw or Amend Admission), TBMP § 528.06 (Request for Discovery to Respondent to Summary Judgment), and TBMP § 528.07 (Unpleaded Issue).

528.03 is confusing when it states “Examples of papers which are or may be germane to a motion....”. The words “may be germane” indicate that a brief in opposition to the summary judgement motion “may” be germane, but not necessarily required.

Opposer should be granted some tolerance regarding its error in misinterpreting the above, due to Opposer’s lack of legal knowledge.

The Opposer was of the opinion that if it were required to reply to the summary judgement, it would be either notified in a reset trial schedule, which it has relied upon (and strictly adhered to while Opposer

represented itself) for all TTAB requirements, or alternatively, it would be granted a period for rebuttal by the TTAB.

Opposer has spent considerable time and expense opposing Applicant's registration, was prepared to go to trial having submitted its pretrial disclosures, and sought the services of a certified court reporter (see Exhibit A) to take Opposer's testimony so that it could submit certain emails into evidence. This is not the behavior of someone who was going to concede.

Opposer had made a phone call to the interlocutory attorney, Andrew P Baxley, regarding a question it had on pretrial disclosures. Had Opposer been unsure of the actions required by it regarding its duties under a summary judgement motion, Opposer would have had no problem again picking up the phone and contacting the interlocutory attorney. Also, Opposer immediately contacted the interlocutory attorney (and an attorney by the name of Ann Linehan who seemed to be taking calls on behalf of the interlocutory lawyer until his return on May 4, 2016) once it had received notification of the default judgement. The interlocutory attorney, and Ann Linehan, subsequently kindly returned Opposer's phone calls (all these phone calls can be verified by interlocutory attorney). There would be no reason for Opposer to willfully ignore a requirement by the TTAB to file a timely brief in response, wait until the allocated time to file had elapsed resulting in the issuance of a default judgement by the TTAB, and then immediately contact the TTAB after its decision to find out if it could appeal the default judgement. If an extension of time were all that were required by Opposer, it would have simply filed for an extension of time.

You can see from the Applicant's summary judgement brief that Opposer has all its evidence compiled and prepared (over approx. the past year and a half). This compilation of evidence up to and including pretrial disclosures runs counter to the conclusion by the TTAB that Opposer conceded, nor is there any action by Opposer to date that evidences even an inclination to concede.

Additionally, since Opposer took the time to prepare and submit its pretrial disclosures (see Exhibit B) to disclose that it would not be calling any witnesses during trial (other than itself), which was not a necessary requirement in that had the Opposer not submitted any pretrial disclosures, Opposer would still have been unable to call any witnesses during trial, surely this sets precedent that Opposer would have also disclosed that it wanted to concede, again not a necessary requirement for a case to be conceded.

Under trademark rule 2.128(a)(3), 37 C.F.R. § 2.128(a)(3), when a party in the position of plaintiff fails to file a main brief, an order may be issued allowing plaintiff a set time, not less than 15 days, in which to show cause why the TTAB should not treat such failure as a concession of the case.

Opposer believes it would have been a reasonable action by the TTAB to issue such an order to Opposer, a novice in this field of practice representing itself, whose exemplary history of adherence to the TTAB's trial schedule (while Opposer represented itself) is clear precedent that the default was not willful.

III

CONCLUSION

Opposer believes that it has demonstrated sufficient precedents, with reference to law and its personal actions, which, when taken all together, provide at least reasonable grounds to believe that the default was not willful.

For the foregoing reasons, Opposer respectfully requests that the default judgement entered in this matter be set aside.

Respectfully submitted,

Maurice D Landers

/Maurice D Landers/

30-80 33rd St., Fl. 3

Astoria, NY 11102

347 827 8713

mauricelanders@yahoo.com

Representing itself

Date: May 18, 2016

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon Applicant this 18th day of May, 2016, by mailing a copy thereof via first-class mail, postage pre-paid, to Roberto Ledesma, Lewis and Lin LLC, 45 Main Street, Suite 608, Brooklyn, NY 11201-8200.

/Maurice D Landers/

Maurice D Landers

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DECLARATION OF MAURICE D LANDERS IN SUPPORT OF
OPPOSER'S MOTION TO SET ASIDE OR VACATE DEFAULT JUDGEMENT

I, Maurice D Landers, declare as follows:

1. I am representing myself (Opposer) in this proceeding. I am competent to make this Declaration and the facts set forth in this Declaration are based on my personal knowledge or a review of business records.
2. Attached hereto as Exhibit A is a true and correct copy of Opposer's communications with a certified court reporter by the name of Chris Weiss, where Opposer requests Mr. Weiss to take its testimony so that it can submit certain emails into evidence.
3. Attached hereto as Exhibit B is a true and correct copy of Opposer's pretrial disclosures.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 18th day of May, 2016 at New York, New York.

/Maurice D Landers/

Maurice D Landers

On Thursday, March 3, 2016 4:12 PM, Clifford Weiss <cweiss@veritext.com> wrote:

Sounds good.

--Cliff Weiss
516-608-2417

From: maurice landers
Sent: Thursday, March 3, 2016 3:59:40 PM
To: Clifford Weiss
Subject: Re: TTAB opposition deposition

Hi Chris,

Thank you for getting back to me.

Sure, I can call you tomorrow morning. Does 10am suit you?

Fyi, my no. is 347 827 8713

Many thanks
Maurice

From: Clifford Weiss <cweiss@veritext.com>;
To: maurice landers <mauricelanders@yahoo.com>;
Subject: RE: TTAB opposition deposition
Sent: Thu, Mar 3, 2016 8:31:54 PM

Hi Maurice,

Thank you for contacting Veritext regarding your upcoming deposition. Do you have a contact number so we can discuss this further? Or you can reach me at 516-303-2745 or my direct line at 516-608-2417 Did you have time tomorrow morning to discuss? I look forward to hearing from you.

Kind regards,

Cliff Weiss

From: maurice landers [mailto:mauricelanders@yahoo.com]
Sent: Thursday, March 03, 2016 2:55 PM
To: Clifford Weiss
Subject: TTAB oposition deposition

Hi Clifford,

I'm looking for a certified court reporter to take testimony relating to a trademark opposition I've filed. I'm both the opposer/plaintiff and only witness. Therefore, you would be taking my testimony. I had thought that I could submit my evidence via a notice of reliance, but upon learning more about the process, realize that I can only submit email evidence via testimony deposition.

As you are probably aware, the TTAB does not preside over the taking of testimony. Depositions are submitted to the board in writing. Therefore, I will need your services to do whatever I need to do to properly submit my evidence to the TTAB durine my trial period. I assume your services including taking my oath etc.

I will not be calling any witnesses, and I don't believe the adverse party will want to be present. I will of course inform them when and where I intend to give testimony should they wish to attend and cross examine.

Could you let me know if this is something you can do, and if so, your prices etc. I was referred to your firm by Jeff Benz.

Many thanks
Maurice D. Landers

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PRETRIAL DISCLOSURES OPPOSER

Pursuant to Fed. R. Civ. P. 26 (a) (3), and Trademark Rules 2.121(e) and 2.118, Opposer Maurice D. Landers representing itself hereby submits its Pretrial Disclosures.

I. Witnesses

I do not plan to take testimony from any witnesses. I, the Opposer, will be the only person giving testimony in this opposition.

II. Exhibits

A party need not disclose, prior to its testimony period, any notices of reliance it intends to file during its testimony period. Thus, each document or other exhibit that a party plans to introduce at trial does not need to be disclosed to the other party. [Trademark Rules Section 2.118] A party planning to introduce an adverse party's discovery deposition, or part thereof, need not disclose such plans. [Trademark Rules Section 2.118]

Respectfully submitted,

Maurice D Landers

/Maurice D Landers/

30-80 33rd St., Fl. 3

Astoria, NY 11102

347 827 8713

mauricelanders@yahoo.com

Representing itself

Date: February 17, 2016

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon Applicant this 17th day of February, 2016, by mailing a copy thereof via first-class mail, postage pre-paid, to Roberto Ledesma, Lewis and Lin LLC, 45 Main Street, Suite 608, Brooklyn, NY 11201-8200.

/Maurice D Landers/

Maurice D Landers