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

Proceeding	91221547
Party	Defendant Pure Cigar Group Incorporated
Correspondence Address	WILLIAM E MAGUIRE LAW OFFICES OF WILLIAM E MAGUIRE 401 WILSHIRE BLVD, 12TH FLOOR SANTA MONICA, CA 90401 UNITED STATES maguire@artnet.net
Submission	Other Motions/Papers
Filer's Name	Frank Herrera
Filer's e-mail	fherrera@hnewmedia.com
Signature	/FH/
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

J.C. NEWMAN CIGAR COMPANY)	
)	
Opposer,)	
)	
v.)	Opposition No.: 91221547
)	
PURE CIGAR GROUP, INCORPORATED)	
)	
Applicant.)	
)	

**APPLICANT’S RESPONSE TO BOARD’S JUNE 11, 2015
ORDER TO SHOW CAUSE
AND APPLICANT’S MOTION TO SET ASIDE DEFAULT**

COMES NOW, Applicant Pure Cigar Group, Incorporated (“PCG” or “Applicant”) and files this response to the Board’s June 11, 2015 Order to Show Cause, and incorporates Applicant’s Motion To Set Aside Default. For good cause shown below, Applicant respectfully requests that the Board grant Applicant’s motion and accept the Answer and Affirmative Defenses filed contemporaneously herewith.

On April 17, 2015, Opposer initiated this action. On the same day, the Board issued a scheduling order setting May 27, 2015 as the deadline for Applicant to file an answer or other responsive pleading. On June 11, 2015, the Board issued a “Notice of Default” and gave Applicant thirty (30) days to provide good cause as to why judgment by default should not be entered.

Applicant’s failure to file an answer or other responsive pleading fifteen (15) days earlier was simply a result of miscommunication with its prior counsel of record. Namely, since Applicant’s principal spends most of his time in Tamboril, Dominican

Republic, the location of his cigar factory, he did not timely receive certain mailings that were sent to his Miami address by counsel of record. Further, as luck would have it, some of counsel's emails to Applicant regarding this dispute were automatically redirected to Applicant's email "spam" folder. It was not until today, June 11, 2015 that Applicant was made aware of the May 27, 2015 deadline.

The failure by Applicant to timely file an answer or other responsive pleading was not willful. The moment that Applicant was made aware of this, he immediately contacted his prior counsel and thereafter sought the undersigned counsel to defend this matter. Applicant instructed the undersigned to take all action to avoid judgment by default. While it is unfortunate that a timely answer or other responsive pleading was not filed by the May 27, 2015 deadline, Applicant believes that the short delay in filing (fifteen calendar days, and only eleven business days), will not cause prejudice to the Opposer. Pursuant to the Board's scheduling order, the deadline for the parties to conduct the discovery conference has not yet passed (June 26, 2015). Thus, apart from the short delay, Opposer can claim no substantive prejudice because of this late filing.

MEMORANDUM OF LAW

Pursuant to TBMP Section 312.02, a Notice of Default may be set aside on a showing of good cause. The factors to consider in determining a motion to set aside the default for failure to answer the complaint are: (1) whether plaintiff [Opposer] will be prejudiced; (2) whether the default was willful; and (3) whether the defendant [Applicant] has a meritorious defense to the action. Id.

Opposer should not be prejudiced since this action is in the early stages. As noted above, the deadline for the parties to conduct a discovery conference in June 26, 2015 and therefore discovery has not yet opened.

The default was not willful, but rather was due to communication issues arising from the fact that Applicant's principal spends most of his time in Tamboril, Dominican Republic. Because of this, he missed mail sent to his Miami address, and as luck would have it, emails from his prior counsel were stuck in his email's "spam" folder. The moment that Applicant's principal learned of the missed deadline, he immediately spoke to his prior counsel, and therefore hired the undersigned, all in the same day.

Applicant has a meritorious defense to this action. First, Applicant has used the term "CESAR" in connection with cigars since 1995. Thus, the issue of "likelihood of confusion" regarding that term will be litigated in this matter. It follows that Applicant also has a defense that there is no likelihood of confusion regarding its use of the design of a crown since that design element is used on hundreds of marks as evidence by the Trademark Office records by searching for the design code 24.11.01 with "cigars" and 24.11.02 and "cigars." 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. Id.

The policy of the Board is to decide cases on their merits, and therefore it is respectfully requested that the Board find good cause and accept the Answer as filed.

WHEREFORE, for all of the foregoing reasons, Applicant respectfully requests that the Board find good cause and accept Applicant's Answer and Affirmative Defenses filed contemporaneously herewith.

Dated: June 11, 2015

s/FRANK HERRERA

Frank Herrera
H New Media Law
12008 South Shore Blvd.,
Suite 105
Wellington, Florida 33414
Tel.: (561) 841-6380
Fax.: (786) 257-5682
www.hnewmedia.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent to Opposer by electronic mail, and was served on Opposer by mailing, via U.S. first-class mail, postage paid, said copy on June 11, 2015, to:

Jordan S. Weinstein, Esq.
BARNES & THORNBURG, LLP
1717 Pennsylvania Avenue, N.W.
Suite 500
Washington, D.C. 20006
Tel.: (202) 289-1313
Fax.: (202) 289-1330
Docketingtm-dc@btlaw.com
jweinstein@btlaw.com

s/FRANK HERRERA
June 11, 2015