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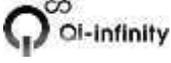
Filing date: **11/04/2015**

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

Proceeding	91222313
Party	Defendant Kaena Corp
Correspondence Address	MATTHEW H SWYERS THE TRADEMARK COMPANY PLLC 344 MAPLE AVENUE WEST, PBM 151 VIENNA, VA 22180 UNITED STATES mswyers@thetrademarkcompany.com
Submission	Other Motions/Papers
Filer's Name	Matthew H. Swyers
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Signature	/Matthew H. Swyers/
Date	11/04/2015
Attachments	Motion for Leave to File Answer Late.pdf(96283 bytes )

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

Serial No. 86/391,149

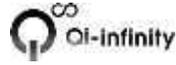
For the mark  Oi-infinity

Harman International Industries, Incorporated,	:	
	:	
Opposer,	:	
	:	
vs.	:	Opposition No. 91222313
	:	
Kaenaa Corp,	:	
	:	
Applicant.	:	

**MOTION FOR LEAVE TO FILE ANSWER LATE**

COMES NOW the Applicant, Kaenaa Corp (hereinafter “Applicant”), by counsel, and submits the foregoing, pursuant to TBMP § 312.02 with good cause shown respectfully requests that the Board grant Applicant ‘s Motion for Leave to File the Answer Late in the instant case and accept the attached Answer and Grounds of Defense in this matter. In support thereof Applicant states as follows:

**STATEMENT OF THE CASE**

1. On or about June 10, 2015 Harman International Industries, Incorporated (hereinafter “Opposer”) instituted the instant proceeding against the registration of Applicant’s  mark.

2. On July 21, 2015 Applicant requested a 30 day extension request with consent because the parties were engaged in settlement discussions.

3. On or about July 21, 2015 the Board granted Applicant’s extension request, resetting the deadline for Applicant to file an answer to August 20, 2015.

4. On August 20, 2015 Applicant requested a 30 day extension request with consent because the parties were engaged in settlement discussions.

5. On or about August 20, 2015 the Board granted Applicant's extension request, resetting the deadline for Applicant to file an answer to September 19, 2015.

6. On September 21, 2015 Applicant requested a 30 day extension request with consent because the parties were engaged in settlement discussions.

7. On or about September 21, 2015 the Board granted Applicant's extension request, resetting the deadline for Applicant to file an answer to October 19, 2015.

8. Applicant inadvertently failed to timely file its Answer and Grounds of Defense.

### **RESPONSE**

Good cause why default judgment should not be entered against a defendant, for failure to file a timely answer to the complaint, is usually found when the defendant shows that (1) the delay in filing an answer 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 a timely answer, 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 an answer in the instant matter due to Applicant's travels in conjunction with continued settlement negotiations with Opposer.

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. 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 answer filed in a timely manner. 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 Answer 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 grant Applicant's Motion For Leave to File the Answer and Grounds of Defense Late in the instant case and accept the attached Answer and Grounds of Defense in this matter.

Respectfully submitted this 4<sup>th</sup> day of November, 2015.

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**

Serial No. 86/391,149

For the mark  OI-infinity

Harman International Industries, Incorporated,	:	
	:	
Opposer,	:	
	:	
vs.	:	Opposition No. 91222313
	:	
Kaenaa Corp,	:	
	:	
Applicant.	:	

**ANSWER AND GROUNDS OF DEFENSE**

COMES NOW the Applicant, Kaenaa Corp (hereinafter “Applicant”), by and through counsel, The Trademark Company, PLLC, and files its Answer and Grounds of Defense to the Notice of Opposition and in response to Opposer’s allegations states as follows:

ANSWER

Applicant denies the allegations set forth in the Introductory Paragraph of the Notice of Opposition and demands strict proof thereof. In response to the specifically enumerated paragraphs, the Applicant states as follows:

1. Applicant is without knowledge of the allegations set forth in Paragraph 1 of the Notice of Opposition and therefore denies the same.
2. Applicant is without knowledge of the allegations set forth in Paragraph 2 of the Notice of Opposition and therefore denies the same.
3. Applicant denies the allegations set forth in Paragraph 3 of the Notice of Opposition as phrased and demands strict proof thereof.

4. Applicant denies the allegations set forth in Paragraph 4 of the Notice of Opposition as phrased and demands strict proof thereof.

5. Applicant is without knowledge of the allegations set forth in Paragraph 5 of the Notice of Opposition and therefore denies the same.

6. Applicant denies the allegations set forth in Paragraph 6 of the Notice of Opposition as phrased and demands strict proof thereof.

7. Applicant admits to the allegations set forth in Paragraph 7 of the Notice of Opposition.

8. Applicant is without knowledge of the allegations set forth in Paragraph 8 of the Notice of Opposition and therefore denies the same.

9. Applicant denies the allegations set forth in Paragraph 9 of the Notice of Opposition and demands strict proof thereof.

10. Applicant denies the allegations set forth in Paragraph 10 of the Notice of Opposition and demands strict proof thereof.

11. Applicant denies the allegations set forth in Paragraph 11 of the Notice of Opposition and demands strict proof thereof.

12. Applicant denies the allegations set forth in Paragraph 12 of the Notice of Opposition and demands strict proof thereof.

13. Applicant denies the allegations set forth in Paragraph 13 of the Notice of Opposition and demands strict proof thereof.

Applicant further denies all allegations not specifically, actually or constructively, admitted in the foregoing paragraphs of this Answer and Grounds of Defense.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed.

Respectfully submitted this 4<sup>th</sup> day of November, 2015.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/

Matthew H. Swyers, Esq.

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Vienna, VA 22180

Tel. (800) 906-8626

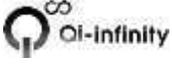
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Counsel for Applicant

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Harman International Industries, Incorporated,	:	
	:	
Opposer,	:	
	:	
vs.	:	Opposition No. 91222313
	:	
Kaenaa Corp,	:	
	:	
Applicant.	:	

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I caused a copy of the foregoing this 4<sup>th</sup> day of November, 2015, to be served, via first class mail, postage prepaid, upon:

Helen E. Omapas  
Harman International Industries, Incorporated  
8500 Balboa Boulevard  
Northridge, CA 91329

Matthew H. Swyers/  
Matthew H. Swyers