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

Proceeding	91225439
Party	Defendant John Vrana
Correspondence Address	MATTHEW H SWYERS THE TRADEMARK COMPANY 344 MAPLE AVE W PMB 151 VIENNA, VA 22180-5612 UNITED STATES admin@thetrademarkcompany.com
Submission	Other Motions/Papers
Filer's Name	Matthew H. Swyers
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Signature	/Matthew H. Swyers/
Date	02/25/2016
Attachments	Motion to Set Aside Default.pdf(101356 bytes)

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

In the matter of U.S. Serial No. 86/542,693
For the mark IRISH FOOTBALL

In the matter of U.S. Serial No. 86/535,930
For the mark ONCE A DOMER, ALWAYS A DOMER

University of Notre Dame du Lac,	:	
	:	
Opposer,	:	
	:	
vs.	:	Opposition No. 91225439
	:	
John Vrana,	:	
	:	
Applicant.	:	

MOTION FOR LEAVE TO FILE ANSWER LATE

COMES NOW the Applicant, John Vrana (hereinafter “Applicant”), by counsel, and submits the instant Response to the Show Cause Order entered by the Board on or about February 16, 2016 and pursuant to TBMP § 312.02 with good cause shown respectfully requests that the Board set aside the Notice of Default 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 December 21, 2015 University of Notre Dame du Lac (hereinafter “Opposer”) instituted the instant proceeding against the continued registration of Applicant’s IRISH FOOTBALL and ONCE A DOMER, ALWAYS A DOMER marks.
2. Applicant’s deadline to file its Answer and Grounds of Defense was January 30, 2016.
3. Applicant inadvertently failed to timely file its Answer and Grounds of Defense.
4. The Board subsequently issued the Notice of Default at issue herein.

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 and was not aware that the same had passed until the default notice. 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.

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. 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 set aside the Notice of Default in the instant case and accept the attached Answer and Grounds of Defense in this matter.

Respectfully submitted this 25th day of February, 2016.

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
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University of Notre Dame du Lac,	:	
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vs.	:	Opposition No. 91225439
	:	
John Vrana,	:	
	:	
Applicant.	:	

ANSWER AND GROUNDS OF DEFENSE

COMES NOW the Applicant, Peter Cruz (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 admits the allegations set forth in Paragraph 1 of the Notice of Opposition.
2. Applicant admits the allegations set forth in Paragraph 1 of the Notice of Opposition.
3. Applicant admits the allegations set forth in Paragraph 3 of the Notice of Opposition.

4. Applicant is without knowledge of the allegations set forth in Paragraph 4 of the Notice of Opposition and therefore denies the same.

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 is without knowledge of the allegations set forth in Paragraph 6 of the Notice of Opposition and therefore denies the same.

7. Applicant is without knowledge of the allegations set forth in Paragraph 7 of the Notice of Opposition and therefore denies the same.

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 is without knowledge of the allegations set forth in Paragraph 9 of the Notice of Opposition and therefore denies the same.

10. Applicant is without knowledge of the allegations set forth in Paragraph 10 of the Notice of Opposition and therefore denies the same.

11. Applicant is without knowledge of the allegations set forth in Paragraph 11 of the Notice of Opposition and therefore denies the same.

12. Applicant denies the allegations set forth in Paragraph 12 of the Notice of Opposition as phrased and demands strict proof thereof. Applicant cannot verify the authenticity of the attached Exhibit A and therefore denies the same.

13. Applicant is without knowledge of the allegations set forth in Paragraph 13 of the Notice of Opposition and therefore denies the same.

14. Applicant denies the allegations set forth in Paragraph 14 of the Notice of Opposition as phrased and demands strict proof thereof.

15. Applicant is without knowledge of the allegations set forth in Paragraph 15 of the Notice of Opposition and therefore denies the same.

16. Applicant denies the allegations set forth in Paragraph 16 of the Notice of Opposition as phrased and demands strict proof thereof.

17. Applicant denies the allegations set forth in Paragraph 17 of the Notice of Opposition and demands strict proof thereof.

18. Applicant hereby incorporates by reference its responses to the allegations contained in Paragraphs 1 – 17 of the Notice of Opposition as stated hereinabove.

19. Applicant denies the allegations set forth in Paragraph 19 of the Notice of Opposition and demands strict proof thereof.

20. Applicant denies the allegations set forth in Paragraph 20 of the Notice of Opposition and demands strict proof thereof.

21. Applicant denies the allegations set forth in Paragraph 21 of the Notice of Opposition and demands strict proof thereof.

22. Applicant denies the allegations set forth in Paragraph 22 of the Notice of Opposition and demands strict proof thereof.

23. Applicant denies the allegations set forth in Paragraph 23 of the Notice of Opposition and demands strict proof thereof.

24. Applicant denies the allegations set forth in Paragraph 24 of the Notice of Opposition and demands strict proof thereof.

25. Applicant hereby incorporates by reference its responses to the allegations contained in Paragraphs 1 – 24 of the Notice of Opposition as stated hereinabove.

26. Applicant is without knowledge of the allegations set forth in Paragraph 26 of the Notice of Opposition and therefore denies the same.

27. Applicant denies the allegations set forth in Paragraph 27 of the Notice of Opposition and demands strict proof thereof.

28. Applicant denies the allegations set forth in Paragraph 28 of the Notice of Opposition as phrased and demands strict proof thereof.

29. Applicant denies the allegations set forth in Paragraph 29 of the Notice of Opposition and demands strict proof thereof.

30. Applicant denies the allegations set forth in Paragraph 30 of the Notice of Opposition and demands strict proof thereof.

31. Applicant denies the allegations set forth in Paragraph 31 of the Notice of Opposition and demands strict proof thereof.

32. Applicant hereby incorporates by reference its responses to the allegations contained in Paragraphs 1 – 31 of the Notice of Opposition as stated hereinabove.

33. Applicant denies the allegations set forth in Paragraph 33 of the Notice of Opposition and demands strict proof thereof.

34. Applicant denies the allegations set forth in Paragraph 34 of the Notice of Opposition and demands strict proof thereof.

35. Applicant denies the allegations set forth in Paragraph 35 of the Notice of Opposition and demands strict proof thereof.

36. Applicant denies the allegations set forth in Paragraph 36 of the Notice of Opposition as phrased and demands strict proof thereof.

37. Applicant denies the allegations set forth in Paragraph 37 of the Notice of Opposition and demands strict proof thereof.

38. Applicant denies the allegations set forth in Paragraph 38 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 25th day of February, 2016.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/

Matthew H. Swyers, Esq.

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Vienna, VA 22180

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Counsel for Applicant

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John Vrana,	:	
	:	
Applicant.	:	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a copy of the foregoing this 25th day of February, 2016, to be served, via first class mail, postage prepaid, upon:

Katrina G Hull
Michael Best & Friedrich LLP
100 East Wisconsin Avenue, Suite 3300
Milwaukee, WI 53202

/Matthew H. Swyers/
Matthew H. Swyers