

ESTTA Tracking number: **ESTTA765737**

Filing date: **08/20/2016**

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

Proceeding	91227260
Party	Defendant Wallace Mayer de Rothsman
Correspondence Address	WALLACE MAYER DE ROTHSMAN TRIPLE THIRTEEN GROUP INC 2221 NE 164TH ST STE 296 NORTH MIAMI BEACH, FL 33160-3703 UNITED STATES info@peermiums.com
Submission	Other Motions/Papers
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Attachments	Peermiums Final.pdf(113305 bytes )

1 **UNITED STATE PATENT AND TRADEMARK OFFICE**  
2 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

3 Application No.: 86754033

4 Trademark: PEERMIUMS and design

5 Services: Various services in Class 35

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7 \_\_\_\_\_ )  
8 **THE TRAVELERS INDEMNITY** )  
9 **COMPANY,** )

10 Opposer, )

11 v. )

12 **WALLACE MAYER DE ROTHSMAN,** )

13 Applicant. )  
14 \_\_\_\_\_ )

Opposition No. 91227260

**APPLICANT'S REQUEST TO SET  
ASIDE DEFAULT**

14 Applicant, by its counsel, hereby requests the Board to set aside the Notice of Default of July  
15 25, 2016.

16 **BACKGROUND**

17 Applicant applied to register the mark PEERMIUMS and design. The design element was an  
18 umbrella. Opposer based its opposition on various registered marks which contain or comprise the  
19 design of an umbrella. (Docket No. 1). In lieu of an Answer, Applicant filed a motion for summary  
20 judgment. (Docket No. 4.) Opposer moved to strike the motion as untimely and it moved for default.  
21 (Docket No. 5). On July 25, 2016, the Board granted the motion but gave Applicant thirty (30) days  
22 to show cause why default should not be entered. (Docket No. 6).

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1 **APPLICABLE LAW**

2 Default judgment is a Draconian remedy because the law prefers that cases be decided on  
3 their merits. The Board considers the following in determining whether good cause exists for the  
4 failure to file a timely Answer: (a) was the delay the result of willful conduct or gross neglect, (2)  
5 will the plaintiff be substantially prejudiced by the delay, and (3) whether the defendant has a  
6 meritorious defense to the action. The showing of a meritorious defense does not require an  
7 evaluation of the merits of the case. All that is required is a plausible response to the allegations in  
8 the Notice of Opposition. *DeLorme Publishing Co v. Eartha's Inc.*, 60 U.S.P.Q.2d 1222, 1224  
9 (TTAB 2000). All doubts should be resolved in Applicant's favor.

10 **ANALYSIS**

11 There is good cause for setting aside the default. As detailed in the attached Declaration of  
12 Wallace Mayer de Rothsman, the Applicant was proceeding pro se. He is an entrepreneur, not a  
13 lawyer, and is unfamiliar with the Board's rules. (Rothsman Decl. ¶¶ 2, 3(Exhibit 1). Believing that  
14 the case lacked merit, he filed and served a summary judgment motion in lieu of an Answer. He  
15 served this on the day the Answer was due. (Id. ¶ 4). He did not know that the motion was untimely  
16 and had assumed (reasonably) that if the motion was granted it would moot the need for an Answer.  
17 (Id. ¶ 5). Had he known the motion was untimely he would have filed an Answer (Id. ¶ 5).

18 Based on these facts, it is clear that the Applicant was interested in defending the case and  
19 was doing so as best he could using his layman's knowledge and making some reasonable  
20 assumptions about the Board's rules and practices. He was aware of the deadline and served the  
21 motion on that date which reflects that he was trying to meet the deadline. His assumptions may have  
22 been incorrect, but his conduct clearly indicates a desire to respond to the Notice of Opposition. His  
23 failure to file an Answer did not result from willfulness or gross negligence.

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1 Opposer will not suffer any prejudice, let alone substantial prejudice, from the delay in filing  
2 the Answer. While the schedule has been pushed back, this was due in large part to the motion  
3 practice and Opposer's own filing of a motion to strike and for default. Now that its motion has been  
4 decided, the case may resume along its normal schedule.

5 Applicant is filing an Answer with this request and it asks that the Board accept it (Exhibit 2).  
6 The Answer reflects that Applicant has denied nearly all of the contentions and is prepared to defend  
7 the case. This is more than the required "plausible response." Applicant's summary judgment motion  
8 also demonstrates that he has a meritorious defense to the claims.

9 **CONCLUSION**

10 Applicant is prepared to defend the case. The Board should set aside the notice of default and  
11 let him to do so.

12 Respectfully submitted.

13 Dated: August 20, 2016

14 **LAW OFFICE OF PAUL W. REIDL**

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22 *Attorney for Applicant, Wallace Mayer de Rothsman*



# **EXHIBIT 1**

1 **UNITED STATE PATENT AND TRADEMARK OFFICE**  
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3 Application No.: 86754033

4 Trademark: PEERMIUMS

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12 **WALLACE MAYER DE ROTHSMAN,** )

13 Applicant. )  
14 \_\_\_\_\_ )

Opposition No. 91227260

**DECLARATION OF WALLACE  
MAYER DE ROTHSMAN**

14 I, Wallace Mayer de Rothsman declare as follows:

15 1. I am the Applicant in this proceeding. I make this Declaration based on personal  
16 knowledge, and if called as a witness could testify to the following facts.

17 2. I am an entrepreneur and a graduate of Harvard University. I do not have a legal  
18 background.

19 3. I am unfamiliar with the rules of the Trademark Trial and Appeal Board. Up until this  
20 point in the case I represented myself because I believed that the Opposer's case had no merit and the  
21 Board would dismiss it following a summary judgment motion.

22 4. My failure to file a timely Answer was not willful not did it result from gross  
23 negligence. I served the summary judgment motion on May 16, 2016, which was on the date the  
24 Answer was due. I had assumed that the Board would suspend the time for filing an answer while it

1 considered the motion because if the motion was granted then an Answer would be unnecessary. I  
2 did not know that the motion was untimely under the Board's rules. Had I known that I would have  
3 filed an Answer.

4 5. I am still interested in this case and this trademark, and I have retained counsel who is  
5 experienced in TTAB proceedings. As mentioned in the Declaration that accompanied my summary  
6 judgment motion, I am using this mark in an active business venture and plan to continue to do so.

7 6. I therefore ask the Board to accept my Answer filed with the response to the default  
8 notice and allow me to defend my application.

9 Executed on August 19, 2016, at Aventura, Florida.

10 I declare under penalty of perjury under the laws of the United States that the foregoing is true  
11 and correct.

12 /s/ Wallace Mayer de Rothsman

13 Wallace Mayer de Rothsman  
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## **EXHIBIT 2**



1           6.       Applicant is without knowledge or information on the allegations in Paragraph 6 of the  
2 Notice of Opposition and they are therefore denied.

3           7.       Applicant is without knowledge or information on the allegations in Paragraph 7 of the  
4 Notice of Opposition and they are therefore denied.

5           8.       Applicant is without knowledge or information on the allegations in Paragraph 8 of the  
6 Notice of Opposition and they are therefore denied.

7           9.       Applicant is without knowledge or information on the allegations in Paragraph 9 of the  
8 Notice of Opposition and they are therefore denied.

9           10.      Applicant is without knowledge or information on the allegations in Paragraph 10 of  
10 the Notice of Opposition and they are therefore denied.

11          11.      Applicant is without knowledge or information on the allegations in Paragraph 11 of  
12 the Notice of Opposition and they are therefore denied.

13          12.      Applicant is without knowledge or information on the allegations in Paragraph 12 of  
14 the Notice of Opposition and they are therefore denied.

15          13.      Applicant is without knowledge or information on the allegations in Paragraph 13 of  
16 the Notice of Opposition and they are therefore denied.

17          14.      The allegations of Paragraph 14 of the Notice of Opposition are admitted.

18          15.      The allegations of Paragraph 15 of the Notice of Opposition are admitted.

19          16.      In response to Paragraph 16, Applicant incorporates by reference its responses to  
20 Paragraphs 1-15 of the Notice of Opposition.

21          17.      Applicant is without knowledge or information on the allegations in Paragraph 17 of  
22 the Notice of Opposition and they are therefore denied.

23          18.      Applicant denies the allegations of Paragraph 18 of the Notice of Opposition.

24          19.      Applicant denies the allegations of Paragraph 19 of the Notice of Opposition.



