



2. The delay will not result in substantial prejudice to the plaintiff.
3. The defendant has a meritorious defense.

**1. The Delay in Filing Is Not the Result of Willful Conduct or Gross Neglect.**

Respondent's failure to timely file an Answer was not intentional or the result of gross neglect. The parties have been actively engaged in settlement negotiations and the terms of settlement have been generally agreed upon. Applicant's failure to submit either the Answer or to request an extension of the time to file the Answer resulted from an oversight by Applicant. As such, Applicant's conduct meets the "inadvertent" standard set forth in *Fred Hayman Beverly Hills Inc. v. Jacques Bernier Inc.*, 21 USPQ2d at 1557.

**2. The Delay Will Not Result in Substantial Prejudice to Petitioner.**

By requiring that a plaintiff suffer *substantial* prejudice, the Board has set a high threshold for denying a defendant the opportunity to defend its mark on the merits. Indeed, the law strongly favors determination of cases on their merits. *CTRL Systems Inc. v. Ultraphonics of North America Inc.*, 52 USPQ2d 1300, 1301 (TTAB 1999). In this instance, Petitioner will not be substantially prejudiced for the following reasons:

a) If Respondent's request for the June 9, 2006 deadline is granted, the Answer will be less than four months late. In *DeLorme Publishing Co. v. Eartha's Inc.*, 60 USPQ2d 1222, 1224 (TTAB 2000), the Board found that a six month delay did not substantially prejudice the opposer.

b) Discovery does not close until July 22, 2006. Because the parties have been actively involved in settlement negotiations, Respondent expects that Petitioner will stipulate to an extension of this date if it becomes necessary.

c) The terms of settlement have been generally agreed upon and Respondent expects that a final settlement will be reached in advance of the requested June 6, 2006 deadline.

**3. Respondent Has a Meritorious Defense.**

The first component of Respondent's POOLBUSTER mark differs from the first component of Petitioner's DUSTBUSTER mark in appearance, spelling, connotation, pronunciation and overall commercial impression. In addition, the POOLBUSTER product is designed and sold exclusively for use in cleaning swimming pools. The parties' goods are neither similar, nor complementary. Thus, the channels of trade and retail outlets for Respondent's goods are likely to be different than those for Petitioner's goods.

A meritorious defense cannot be "frivolous," *Fred Hayman Beverly Hills Inc. v. Jacques Bernier Inc.*, 21 USPQ2d at 1557, and need only be "a plausible response to the allegations contained in the notice of opposition." *DeLorme Publishing Co. v. Eartha's Inc.*, 60 USPQ2d at 1224. As alleged hereto, Respondent's defense is clearly meritorious.

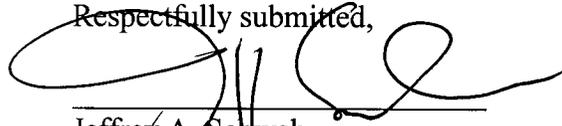
**CONCLUSION**

It is the policy of the Board to resolve any doubt in a proceeding of this nature in favor of the defendant. *Paolo's Associates Ltd. Partnership v. Paolo Bodo*, 21 USPQ2d 1899, 1902 (Comm'r Pat and Trdmarks 1990). Therefore, for the reasons set forth in this response,

Respondent has shown good cause for not entering a default judgment and for setting June 9, 2006 as the deadline for Respondent's Answer to the Petition for Cancellation.

Dated: May 10, 2006

Respectfully submitted,

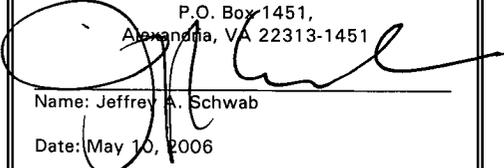


Jeffrey A. Schwab  
ABELMAN, FRAYNE & SCHWAB  
Attorneys at Law  
666 Third Avenue  
New York, New York 10017-5621  
Telephone: (212) 949-9022  
Facsimile: (212) 949-9190  
*Attorneys for Respondent*

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:

Commissioner for Trademarks  
United States Patent and Trademark Office  
P.O. Box 1451,  
Alexandria, VA 22313-1451



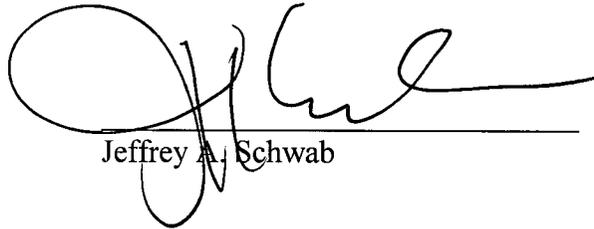
Name: Jeffrey A. Schwab

Date: May 10, 2006

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing RESPONDENT'S RESPONSE TO ORDER TO SHOW CAUSE was served on Petitioner by first class mail, postage prepaid, this 10<sup>th</sup> day of May, 2006, to Petitioner's attorney:

William G. Pecau, Esq.  
Step toe & Johnson LLP  
1330 Connecticut Ave., NW  
Washington, DC 20036-1795



Jeffrey A. Schwab

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

\_\_\_\_\_  
THE BLACK & DECKER  
CORPORATION

Petitioner,

Cancellation No. 92045312

WATER TECH LLC,

Respondent.

**POWER OF ATTORNEY**

Water Tech LLC, Respondent in the captioned proceeding, hereby revokes all previous Powers of Attorney and appoints jointly and severally, with full power of substitution, the power of appointment of an associate attorney, and the power of revocation:

Lawrence E. Abelman  
Jeffrey A. Schwab  
Norman S. Beier  
Peter J. Lynfield  
Alan J. Hartnick  
Caridad Pifeiro Scordato  
Julianne Abelman

Jonathan W. Gumpert  
Victor M. Tannenbaum  
Stephen J. Quigley  
Thomas E. Spath  
Julie B. Seyler  
Marie-Anne Mastrovito  
Ned W. Branthover

members of the Bar of the State of New York, whose address is

**ABELMAN, FRAYNE & SCHWAB  
666 Third Avenue  
New York, NY 10017-5621**

to transact all business in the United States Patent and Trademark Office in connection with the captioned matter.

Please address all correspondence to Jeffrey A. Schwab at the above address.

Date 5/10/06

Water Tech, LLC

By   
Name: Guy Erlich  
Title: PRESIDENT