TTAB

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

In the Matter of Fremantle Media North America, Inc. Petitioner, vs. Idol Writer, LLC Registrant	#78450151 **Cancellation No. 92045648**

BOX TTAB
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

OPPOSITION TO PETITIONER'S MOTION FOR SANCTIONS IN THE FORM OF A DEFAULT JUDGMENT AND MOTION FOR LEAVE TO FILE RESPONSES TO PETITIONER'S DISCOVERY REQUESTS

Registrant, by its principal, Phillip Elden, appearing in *propria persona*, submits the within Opposition to Petitioner's Motion for Default Judgment; Motion for Leave to File Responses to Petitioner's Discovery Requests pursuant to 37 C.R.R. Section 2.116(a) and Fed. R. Civ. P. 6(b)and Declaration of Phillip Elden in support thereto.

12-23-2008

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #72

This trademark proceeding was filed by Petitioner following a long, costly and protacted civil litigation which finally resulted in the ownership of the trademark, IDOL WRITER, being returned to its rightful owner, the Registrant. (Decl. of Phillip Elden, attached hereto).

While Registrant has had all intention of complying with the Board's October Order to produce responses to Petitioner's discovery requests, Registrant has been unable to do so due to the inaccessibility of information directly bearing on those discovery requests. All such information was produced during the civil litigation which was dismissed last year but which has been in storage of third parties who were unavailable. (Decl. of Phillip Elden, attached hereto).

Access to the information needed to comply with Petitioner's discovery requests has just been made available to Registrant. (Decl. of Phillip Elden, attached hereto).

Registrant has, on several occasions, attempted to communicate with Petitioner's Counsel and has telephoned Petitioner's counsel on at least 3 occasions. Petitioner's Counsel has failed and refused to return Petitioner's calls. (Decl. of Phillip Elden, attached hereto).

There is not a single prior instance in this matter of Registrant's failure to obey the Board's Order and, indeed, Registrant has never intentionally disregarded the Board's Order. (Decl. of Phillip Elden, attached hereto).

Registrant has all intentions of obtaining trademark counsel in this matter and has, to date, been handicapped by lack of adequate counsel. In this case, no prejudice will be suffered by Petitioner, which is a multi-million dollar corporation enjoying the resources of a large law firm. The reason for the delay is a result of events out of Registrant's

control. And, all extensions previously referenced in Petitioner's Motion to Compel were "mutual".

Default judgment is an extreme sanction, and a "weapon of last, not first, resort." Martin v. Coughlin, 895 F. Supp. 39 (N.D.N.Y. 1995). There is simply no reason in this case to depart from the well-known preference in the federal courts that litigation disputes be resolved on their merits. Richardson v. Nassau County, 184 F.R.D. 497, 501 (E.D.N.Y. 1999).

CONCLUSION

For all of the foregoing reasons, Registrant respectfully requests that Petitioner's Motion for Default Judgment, including its Request that Admissions be "Admitted", be denied, and that Registrant be granted sixty (60) days in which to respond to Petitioner's discovery requests in the within matter.

DATED: December 15, 2008

Respectfully submitted,

Phillip Elden

By: Phillip Elden, Principal
IDOL WRITER, LLC
Registrant

DECLARATION OF PHILLIP ELDEN IN SUPPORT OF REGISTRANT'S OPPOSITION TO PETITIONER'S MOTION FOR DEFAULT JUDGMENT

I, Phillip Elden, do declare:

1. I am principal of Registrant Idol Writer, LLC, and make this Declaration in support of (1) Registrant's Opposition to Petitioner's Motion for Sanctions in the form of a Default Judgment; and (2) Registrant's Request for an extension of sixty (60) days in which to respond to Petitioner's Interrogatories.

2. I have never intentionally disregarded the Board's Order of October 3, 2008 in this matter. The fact is that I was unable to comply with said Order as I was prevented access to the information relative to Petitioner's discovery requests until this past Friday, December 12, 2008.

3. I was substituted into this TTAB proceeding last spring after a long, protracted and costly civil litigation involving the trademark IDOL WRITER which finally resulted in the ownership of the mark being returned to me, as rightful owner, by way of assignment. Since last March, 2008, all information relating to the discovery requests of Petitioner was in storage filing dismissal of the civil action and not in my custody. Until December 12, 2008, access to the information was unavailable to me.

4. As Petitioner states in its Motion, Petitioner knows full well that I have not been represented by trademark counsel in the within matter. As Petitioner also knows, during a brief period in this TTAB proceeding, I was represented by litigation counsel without trademark expertise, and that, due to my prior attorney's trial schedule, I was unable to address discovery in the within matter.

5. Contrary to Petitioner's statements in its Motion and notwithstanding Petitioner's self-serving statements in its August 13, 2008 letter (which I never saw) prior to filing its Motion to Compel, I never refused to "meet and confer" with Petitioner. In fact, as borne out by Petitioners' own attachments to its Motion to Compel, the requests for extensions of time for responding to discovery were mutual.

6. I have telephoned Petitioner's counsel on at least three (3) occasions. Petitioner's counsel has ignored and refused to return my telephone calls.

7. I am currently actively seeking representation of trademark counsel in this matter.

8. As I have just obtained access to the information needed in order for me to comply with Petitioner's discovery requests, I respectfully request that Petitioner's Motion for Sanctions in the form of a Default Judgment be denied; that Petitioner's Request that

Admissions be deemed "Admitted" be denied; and that Registrant be granted an extension of sixty (60) days in which to respond to Petitioner's discovery requests in the within matter.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this Declaration was executed this 15th day of December, 2008 at Santa Monica, California.

DATED: 10-15-08

Phillip Elden

PHILLIP K. ELDEN

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Opposition to Petitioner's Motion for Default Judgment and Registrant's Request for Extension of Time to RespondTo Discovery and Registrant's Declaration in support thereto by depositing one copy in the U.S. Postal Service pre-paid on December 16, 2008 addressed as follows:

Susan Heller, Esq.
Greenberg, Taurig, LLP
2450 Colorado Blvd. Suite 400 E
Santa Monica, CA 90404

Phillip Elden

Phillip Elden
For: IDOL WRITER, LLC, Registrant

CERTIFICATE OF MAILING BY U.S. MAIL

Mark : IDOL WRITER

Cancellation Proceeding: No. 92045648

I hereby certify that the attached Opposition to Petitioner's Motion for Sanctions in the Form of Default Judgment and Registrant's Motion for Leave to File Responses to Petitioner's Discovery Requests and Registrant's Declaration of Phillip Elden in Support Thereto is addressed to UNITED STATES PATENT AND TRADEMARK OFFICE Trademark Trial and Appeal Board P.O. Box 1451. Alexandria, VA 22313-1451 and is being deposited with the United States Postal Service, U.S. Mail, on December 16, 2008.

Phillip Elden

PHILLIP ELDEN