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

Proceeding	92051659
Party	Defendant The Dille Family Trust
Correspondence Address	The Trustees of the Dille Family Trust PO BOX 533 LAKE FOREST, IL 60045 UNITED STATES
Submission	Other Motions/Papers
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Date	08/16/2010
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IN THE UNITED STATES PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

NOWLAN FAMILY TRUST,	)	
	)	
Petitioner,	)	**Cancellation No. 92051659**
	)	
v.	)	**ENTRY OF APPEARANCE**
	)	
THE DILLE FAMILY TRUST,	)	
	)	
Registrant.	)	
	)	

Maurice B. Pilosof of the law firm MAURICE B. PILOSOF, ESQ. hereby enters an appearance on behalf of the Registrant, The Dille Family Trust, the respondent herein.

Respectfully,

MAURICE B. PILOSOF, ESQ.

Dated: August 16, 2010

By: Maurice B. Pilosof

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Attorneys for Registrant The Dille Family Trust

of 1929. The comic strip did fairly well, but did not take off until the direction was radically changed to make it an outer space science fiction strip. Far from the grim post-apocalyptic fiction of Armageddon 2419, Buck Rogers was a space adventurer and rocket ranger. Stories involved Buck Rogers meeting Venusian Princesses and Saturnians. It was then, that the comic strip, heightened by fanciful rocket ships and amazing civilizations, really took off.

Phillip Francis Nowlan was a work-for-hire writer for the Buck Rogers comic strip, and credited as such until 1940, when he died. After Nowlan's death, John Flint Dille twice paid Nowlan's widow to remove any question of ownership concerning rights with respect to Buck Rogers.

In the intervening years, the heirs of the Nowlans' have made various advances to the Dille family, some friendly, and some hostile with respect to Buck Rogers. The filing of the instant proceeding, and the prior trademark filing for BUCK ROGERS, clearly evidencing the latter.

Sometime during the late '70's, the Nowlans approached Mr. Robert C. Dille with a request to use the BUCK ROGERS name and trademark in a proposed re-release of Armageddon 2419 . Mr. Dille agreed that they could call it the "seminal Buck Rogers novel." He also permitted the Nowlan heirs to write some sequels. In each of these books, Robert C. Dille's ownership of the trademark BUCK ROGERS is referenced and acknowledged.

The Nowlan Family Trust filed an application to register the mark BUCK ROGERS on January 15, 2009. The filing was assigned Serial No. 7765008. This application was rejected on the basis of U.S. Trademark Registration Nos. 0714184 and 1,555,781 for the BUCK ROGERS marks owned by the Dille Family Trust. These registrations are the subject of this cancellation proceeding.

Moreover, in February of 2009, the Nowlans sent an intimidating letter to the Dille Family Trust's comic book publisher, Nicky Barrucci. The Dille Family Trust, through their entertainment counsel, responded to this letter and there have been no further developments in this regard. Further in 2009, the Nowlans contacted Dan Herman of Hermes Press who is reprinting all of the BUCK ROGERS comic strips from 1929 to 1967 and made certain assertions concerning rights in BUCK ROGERS, which were responded to directly by Mr. Herman.

II. THE DILLE FAMILY TRUST PENDING APPLICATIONS

The Dille Family Trust filed two new U.S. Trademark Applications on September 21, 2009 for the mark BUCK ROGERS. These applications were assigned Serial Nos. 77831393 and 77831213, respectively. The Dille Family Trust, through its undersigned counsel, has duly responded to the office actions issued in connection with these applications, further evidencing that the Dille Family Trust has not lost interest in this

proceeding nor its BUCK ROGERS trademark. These applications have been suspended on the basis of the Nowlans' application cited above, which application is suspended pending the disposition of this cancellation proceeding. This proceeding should be decided on the merits.

III. ARGUMENT

The Dille Family Trust interest in its BUCK ROGERS trademark as set forth above can be traced back to 1927. This interest has been one of a continuing interest since that time. The issues involving the Dille Family Trust and the Nowlan family with respect to the BUCK ROGERS trademark date back over seventy years. The Dille Family Trust's history of ownership in and to the BUCK ROGERS trademark, and it's protecting such mark from the Nowlan family's advances, clearly evidence that the Dille Family Trust has not lost interest in its BUCK ROGERS mark, nor has it lost interest in this proceeding.

The issue of whether the Board properly denied a motion for judgment by default by the moving petitioner in a cancellation proceeding was reviewed by the Commissioner of Patents and Trademarks in *Paolo's Associates Ltd. Partnership v. Bodo,* 21 USPQ2d 1899, 1901-02(Comm'r 1990). The Commissioner therein stated:

> "The courts and the Board are reluctant to grant judgments by default and tend to resolve doubt in favour of setting aside default, since the law favors deciding cases on their merits. *Morris v. Charnin*, 85 F.R.D. 689 (S.D.N.Y. 1980); *Alopari v. O'Leary*, 154 F.Supp. 78 (E.D. Penn. 1957); *Thrifty Corporation v. Bomax Enterprises*, 228 USPQ 62 (TTAB 1985); *Regent Baby Products Corp. V. Dundee Mills, Inc.*, 199 USPQ 571 (TTAB 1978)."

The Commissioner in *Paolo's Associates* in discussing the elements comprising a showing of good cause for avoiding the entry of default judgment stated:

> "As noted, 'good cause' for avoiding entry of a default judgment can be established when (1) the defendant's delay has not resulted from an act that is wilful, in bad faith, or is in gross neglect, (2)the defendant's delay has not resulted in substantial prejudice to the plaintiff, and (3) the defendant has a meritorious defense." *Paolo Associates* at 1900.

A. <u>The Delay Was Attributed To The Dille Family Trust Attorney Selection Process</u>.

As is set for in the motion of Respondent's prior counsel to withdraw, certain issues arose in connection with the attorney-client relationship involving Respondent and its prior counsel. Respondent, therefore, had to carefully proceed in its selection of its new counsel. Such selection process was not conducted in any manner that can be characterized in any way, as wilful, in bad faith, or through gross neglect. The cautious selection process was warranted in light of certain issues that arose in the prior representation. Therefore, this element cannot be established.

B. Petitioner Has Not Been Prejudiced.

As detailed herein, issues as between Respondent and Petitioner, and their respective predecessors in interest concerning the BUCK ROGERS mark and name have existed for 70 years. As such, a couple months delay in the context of disputes that have been festering for over 70 years is not prejudicial.

C. The Dille Family Trust Has Meritorious Defenses.

The two registrations which are at issue in this proceeding are incontestable registrations. Respondent has meritorious defenses to the grounds alleged in the instant proceeding with respect to its use of the BUCK ROGERS mark in connection with the goods identified in this subject registrations. As set forth above, "the law favors deciding cases on their merits." The Respondent has not lost interest in asserting its meritorious defences in this proceeding, and this proceeding should be decided on the merits.

IV. CONCLUSION

Respondent respectfully submits that the order to show cause should be discharged, and that the proceedings herein be resumed.

Respectfully,

MAURICE B. PILOSOF, ESQ.

Dated: August 16, 2010

By: Maurice B. Pilosof

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Attorneys for Registrant The Dille Family Trust

CERTIFICATE OF SERVICE

The undersigned counsel for Registrant The Dille Family Trust hereby certifies that a true and correct copy of the attached RESPONSE TO ORDER TO SHOW CAUSE was served by First Class mail, postage prepaid, on August 16, 2010 on the following:

John J. O' Malley
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(Counsel for Petitioner)

Maurice B. Pilosof