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

Proceeding	92052049
Party	Defendant Dassa Holdings Ltd.
Correspondence Address	LISA A IVERSON NEAL & MCDEVITT, LLC 1776 ASH ST NORTHFIELD, IL 60093 UNITED STATES pto@nealmcdevitt.com, lisa.iverson@nealmcdevitt.com, jroe@nealmcdevitt.com
Submission	Response to Board Order/Inquiry
Filer's Name	Jeremy M. Roe
Filer's e-mail	pto@nealmcdevitt.com, jroe@nealmcdevitt.com, lisa.iverson@nealmcdevitt.com
Signature	/jmr/
Date	05/06/2010
Attachments	20100506 Respondent's Motion to Set Aside Notice of Default.pdf (4 pages) (18348 bytes)

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

SILK WATER SOLUTIONS INC.,

Cancellation No. 92052049

Petitioner,

v.

DASSA HOLDINGS LTD.,
Respondent

Mark: SILK BALANCE
Reg. No. 3,335,526
Reg. Date: November 13, 2007

**RESPONDENT DASSA HOLDINGS LTD.'S
MOTION TO SET ASIDE TO NOTICE OF DEFAULT**

Pursuant to Fed. R. Civ. P. 60(b), Respondent Dassa Holdings Ltd. (“Respondent”), by and through its counsel, hereby moves the Trademark Trial and Appeal Board (“TTAB” or “Board”) to set aside the Notice of Default mailed on April 6, 2010. Respondent submits that its failure to file an Answer was not intentional and was attributed to lack of proper service on Respondent. This constitutes good cause why judgment should not be entered Respondent, consistent with Fed. R. Civ. P. 55(c). Accordingly, for the reasons set forth herein, Respondent respectfully requests that Judgment by Default not be entered in this proceeding and that Respondent be permitted leave to file its Answer to the Petition for Cancellation (“Petition”), within a reasonable amount of time as required by the Board.

Pursuant to TBMP § 312.02, if a party responds to a Notice of Default showing good cause why a Default Judgment should not be entered against it, the TTAB will set aside the Notice of Default. Good cause for not entering default judgment is usually found when a party can show 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. All three factors exist in this case.

Respondent’s delay in filing its Answer was not the result of willful conduct or gross neglect. During the prosecution of Trademark Registration No. 3335526, the undersigned counsel previously represented the original applicant, Kesteria Ltd. Upon learning of the Petition, the undersigned counsel forwarded a copy of the Petition for Cancellation, as well as the Petition for Cancellation in the related proceeding (Cancellation No. 9205048), to the address of record from the assignment recordation. Counsel did not receive any response, and it learned from Petitioner’s counsel that a service copy that it had sent had been returned as undeliverable.¹ At that time, undersigned counsel contacted Petitioner’s counsel, David A. Lowe, to discuss this issue. After Respondent finally received the Petition, it retained the undersigned counsel to represent it in this matter. The undersigned counsel agreed to represent Respondent and has contacted Mr. Lowe to alert him that it is now representing the Respondent.

Respondent respectfully submits that it has shown the requisite good cause and that Petitioner will not be substantially prejudiced by the Respondent’s delay in submitting an Answer in this proceeding. Further, while Respondent is hopeful that this matter will be amicably resolved between the parties, Respondent has a meritorious defense to the action. Accordingly, Respondent requests that the Notice of Default be set aside and Respondent be allowed to file its Answer to the Petition for Cancellation.

¹ It appears that the service copy that was returned undeliverable was actually a copy of the Petition to Cancel the design mark, the subject of Cancellation No. 9205048. The Board is aware that this related proceeding was suspended pending service, which was formally accepted by the undersigned counsel on April 30, 2010. The notice of default in that proceeding was vacated and those proceedings have been reinstated.

Respectfully submitted,

Dated: May 6, 2010

By: /s/ Lisa A. Iverson

Lisa A. Iverson, Esq.
Jeremy M. Roe, Esq.
NEAL & MCDEVITT, LLC
1776 Ash Street
Northfield, IL 60093
Tel: (847) 441-9100
Fax: (847) 441-0911

*Attorneys for Respondent
DASSA HOLDINGS LTD.*

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this **RESPONDENT DASSA HOLDINGS LTD.’S MOTION TO SET ASIDE NOTICE OF DEFAULT** is being electronically filed with the United States Patent and Trademark Office Trademark Trial and Appeal Board today, May 6, 2010.

_____/s/ Lisa A. Iverson_____

Lisa A. Iverson, Attorney for Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the foregoing **RESPONDENT DASSA HOLDINGS LTD.’S MOTION TO SET ASIDE NOTICE OF DEFAULT** was served upon Counsel for Petitioner by first-class mail, postage pre-paid, this 6th day of May, 2010, addressed as follows:

David A. Lowe, Esq.
BLACK LOWE & GRAHAM, PLLC
701 Fifth Avenue, Suite 4800
Seattle, WA 98104

_____/s/ Lisa A. Iverson_____

Lisa A. Iverson, Attorney for Respondent