

ESTTA Tracking number: **ESTTA380547**

Filing date: **11/24/2010**

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

Proceeding	92052915
Party	Defendant Nankang Rubber Tire Corporation, Ltd.
Correspondence Address	NANKANG RUBBER TIRE CORPORATION, LTD. JEN AI ROAD, SUITE 608, 6F, NO. 136, SECTION 3 TAIPEI, TAIWAN
Submission	Other Motions/Papers
Filer's Name	Frank A. Mazzeo
Filer's e-mail	fmazzeo@ryderlu.com
Signature	/FrankAMazzeo/
Date	11/24/2010
Attachments	Motion to Set Aside Notice of Default.pdf (4 pages)(53282 bytes)

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

In the matter of trademark Serial No. 79/061748
For the mark NK SPORT

NEKEN S.A.R.L.

Cancellation No. 92052915

Petitioner

v.

NANKANG RUBBER TIRE CORP.

Registrant

**MOTION TO REQUEST ACCEPTANCE OF
A LATE FILED ANSWER AND SET ASIDE NOTICE OF DEFAULT**

Registrant Nankang Rubber Tire Corporation ("Nankang"), by its undersigned attorneys, submit the herein motion for leave to file a late answer in the Cancellation proceeding with Neken S.A.R.L. ("Neken") and set aside the notice of default.

I. LEGAL ARGUMENT

The TTAB "is lenient in accepting late-filed answers" when the delay is not excessive. *Mattel v. Henson*, 88 Fed. Appx. 401, n.1 (2004). Nankang, through its counsel, attempted numerous times to obtain an extension from Neken. In fact, Nankang's counsel called Neken's counsel at least five times on the telephone and sent at least two emails to him. None of these communications were answered. Nankang's counsel was not able to file an answer by the November 4, 2010 deadline because he was away in China on a teaching assignment and also because

upon his return he was scheduled to attend four straight days of depositions and deposition preparation in a different matter.

Under the circumstances, the Board has ample reason to employ its leniency and authorize the late filing of an answer. An answer was filed with TTAB on November 8, 2010, only four days past the deadline. Petitioner has not been harmed in any quantum greater than it had already been for the past weeks, by virtue of the delay since the November 4, 2010 deadline, and cannot demonstrate prejudice.

Nor is the length of delay significant. There is not impact on other pending judicial proceedings. The reason for delay was not in bad faith. The answer was filed, merely 4 days past the deadline.

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). Ultimately, there is no reason in this situation to depart from the well-known preference in the federal courts that litigation disputes be resolved on their merits. See, *Richardson v. Nassau County*, 184 F.R.D. 497, 501 (E.D.N.Y. 1999).

II. Conclusion

For the foregoing reasons, Registrant respectfully requests that the notice of default entered in this matter be set aside, that leave be granted such that the answer

filed on November 8, 2010 be accepted as timely, and that
Petitioner's Petition for Cancellation be denied.

Respectfully submitted

/FrankAMazzeo/

Frank A. Mazzeo, Esquire
RYDER, LU, MAZZEO & KONIECZNY LLC
808 Bethlehem Pike, Suite 200
Colmar, PA 18915
215-997-0248 (p)
215-997-0266 (f)
fmazzeo@ryderlu.com

Date: November 24, 2010

CERTIFICATE OF SERVICE

I, Frank A. Mazzeo, Esquire certify a true and correct copy of the foregoing Motion to Accept Late Filed Answer and Set Aside Notice of Default was served this date via e-mail/electronic filing and U.S. Mail upon the following counsel:

**Jeffrey H. Greger, Esq.
Lowe, Hauptman, Ham & Berner, LLP
1700 Diagonal Road
Suite 300
Alexandria, VA 22314
jhgreger@ipfirm.com
Counsel for Petitioner
Neken S.A.R.L.**

/FrankAMazzeo/
Frank A. Mazzeo, Esquire

Dated: November 24, 2010