

ESTTA Tracking number: **ESTTA463911**

Filing date: **03/27/2012**

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

Proceeding	92054923
Party	Plaintiff Valgeir Tomas Sigurdsson
Correspondence Address	NEIL STEINER STEINER & LIBO PROFESSIONAL CORPORATION 433 N CAMDEN DRIVE , SUITE 730 BEVERLY HILLS, CA 90210 UNITED STATES steinlibo@aol.com
Submission	Motion for Default Judgment
Filer's Name	Neil Steiner
Filer's e-mail	steinlibo@aol.com
Signature	/NSS/
Date	03/27/2012
Attachments	Pet's Oppos-2.pdf ( 9 pages )(341642 bytes )

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

In the Matter of Trademark Registration Nos. 1,790,599, 3,322,442, and 4,018,064  
For the Marks Black Death and Design, BLACK DEATH AND BLACK DEATH,  
respectively

Valgeir Tomas Siegurðsson,	)	
	)	
Petitioner,	)	Cancellation No. 92054923
	)	
v.	)	
	)	
Consolidated European Brands Ltd.	)	
	)	
Respondent.	)	
_____	)	

**PETITIONER'S OPPOSITION TO MOTION TO SET ASIDE**

**NOTICE OF DEFAULT**

Petitioner agrees with Respondent's assertion that in order for the Board to set aside a notice of default, a satisfactory showing of good cause why default judgment should not be entered against it must be shown. Respondent sets out three factors of good cause that are each usually met when good caus is found. Despite Respondent's claims to the contrary, the first factor, "the delay in filing an answer was not the result of willful conduct or gross neglect on the part of the defendant" is not present in our case.

In the instant case, the Petition was filed on December 13, 2011. At that time it became public record available for everybody including Respondent and its attorneys.

It should be noted that Thomas Lines does not state unequivocally that he did not receive the Petition. He merely states to the best of his knowledge he did not receive it. Either he received it or he did not. This is just a matter of artful pleading rather than speaking the plain truth. Similarly, Michael J. MacDermott, Esq., the attorney for Petitioner, states that he had no record of receiving it. He did not provide an outright denial of receiving the Petition either. Again, artful pleading and carefully drawn declarations. Last, nobody states that Respondent itself did not receive the Petition when it was served back in December 2011 even though it was mailed to Respondent's address at 35 Old Queen Street, London, United Kingdom SW1H 9JD. Mr. Lines only states that to his knowledge he did not receive it. He states nothing about anybody else within Respondent's organization, he does not state whether he even opened the mail back in December 2011 or looked on line to see if it was actually received. He also does not state that it was not received at Respondent's address of 35 Old Queen Street, London, United Kingdom SW1H 9JD. He certainly does not declare that that is an incorrect address. Most telling is the fact that neither Thomas Lines nor Michael J. MacDermott declare that they were not aware of the Petition of Cancellation back in December 2011. The Petition was on line and available for everyone.

At the outset, it must be stated that this cancellation proceeding is based not just on abandonment, but also upon fraud before the Trademark Office. As the declaration of Neil S. Steiner attests, and as the attached Proof of Service attached to the declaration attests, notice of the institution of the cancellation proceeding in addition to the actual petition itself was sent to Respondent by Petitioner's attorneys' office to Respondent's correct address of record.

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Cancellation No. 92054923

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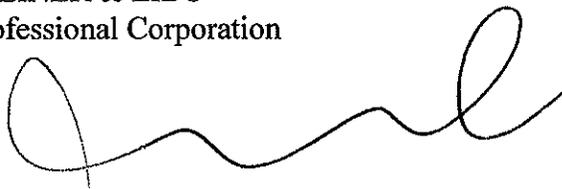
Furthermore, the notice and the Petition were sent to Respondent's attorney of record at the correct address. Neither of these documents ever came back to Petitioner's attorney as undeliverable or addressee unknown.

Petitioner asserts that Respondent's principal Thomas Lines has no scruples and will say whatever he thinks he needs to say to advance his cause. Simply put, Respondent's assertions of not having received notice of the cancellation proceeding is not true.

Accordingly, Petitioner requests that default be entered and that Respondent's motion to set aside default be denied.

Dated: March 26, 2012

Respectfully submitted,  
STEINER & LIBO  
Professional Corporation



By:

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Neil S. Steiner,  
433 N. Camden Drive, Suite 730  
Beverly Hills, CA 90210  
Tel: (310) 273-7778

Enclosures: Declaration of Neil S. Steiner  
Exhibit 1 - Proof of Service of Petition for  
Cancellation dated December 13, 2011

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

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For the Marks Black Death and Design, BLACK DEATH AND BLACK DEATH,  
respectively

Valgeir Tomas Siegurðsson,	)	
	)	
Petitioner,	)	Cancellation No. 92054923
	)	
	)	
v.	)	
	)	
Consolidated European Brands Ltd.	)	
	)	
Respondent.	)	
_____	)	

**DECLARATION OF NEIL S. STEINER**

I, Neil S. Steiner hereby declare and state that:

1. I am the attorney for the Petitioner in this matter to appear in the Petition for Cancellation in this matter.

2. I researched a couple of files available for Respondent's Registration and determine that the most current address for Respondent was 35 Old Queen Street, London, United Kingdom SW1H 9JD. This is the address of Respondent's most recent registration number 4018064.

3. I also researched the public files for Respondent's registration and determined that Michael J. MacDermott, Esq. of Christie, Parker & Hale, LLP was the attorney for Respondent

and his most recent address was P.O. Box 7068, Pasadena, CA 91109-7068.

4. On December 13, 2011, I caused to be served on Petitioner and its attorneys at the address set forth above, the Petition for Cancellation by mailing copies to them at the addresses set forth above; a true and correct copy of our Proof of Service, signed by my secretary, Lena Gomes, is attached hereto as Exhibit "1".

5. Neither of the envelopes was ever returned to my office as undeliverable or addressee unknown. In fact, we have never received back the envelopes containing the Petitions that were served on Respondent and its attorneys.

6. On March 9, 2012, I called the offices of Respondent's attorneys, Christie, Parker & Hale and spoke with the receptionist who conformed that P.O. Box 7068, Pasadena, CA 91109-7068 was their mailing address on December 13, 2011, the date that we served by mail the Petition for Cancellation.

7. Also on March 9, 2012, I received a telephone call from Michael J. MacDermott who confirmed that while their offices changed their mailing address in mid January, 2012 to another Post Office box, their mail was being forwarded by the U.S. Postal Services from the P.O. Box where the Petition for Cancellation was sent. Moreover, Mr. MacDermott never told me that he did not receive the Petition for Cancellation.

8. Also on March 9, 2012, I had a telephone conversation with Mr. MacDermott. He acknowledged receiving the Petition for Cancellation, yet their Motion to Set Aside Notice of Default was not filed until March 21, 2012, almost two weeks later.

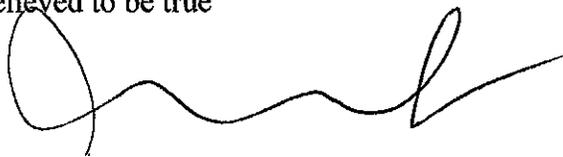
9. Based on the foregoing facts that we served the Petition for Cancellation on Respondent and its attorneys at their proper addresses and that the mailings were never returned to my offices as being undeliverable or sent to an addressee unknown and because their attorneys

had never stated that they did not receive the Petition for Cancellation, no good cause exists for setting aside the default. Further, it is respectfully requested that the USPTO enter a default judgment against Respondent. Simply put, they sat on their hands and did not act in a timely manner after receiving the Petition for Cancellation. Moreover, it should be noted that the other order related to the notice of the default entered by the USPTO was available on line to both Respondent and to its attorneys at all relevant times.

10. Based on the foregoing, the USPTO should not set aside the default that it has taken.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true

Dated: March 26, 2012



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Neil S. Steiner

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**EXHIBIT 1**

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA** )  
3 ) **ss:**  
4 **COUNTY OF LOS ANGELES** )

5 I am employed in the County of Los Angeles, State of California. I am over the age of 18  
6 years and am not a party to the within action. My business address is 433 North Camden Drive,  
Suite 730, Beverly Hills, California 90210.

7 On December 13, 2011, I served the foregoing document(s) described as **PETITION FOR**  
8 **CANCELLATION** on the interested parties in this action by placing a COPY THEREOF enclosed  
in a sealed envelope addressed as follows:

9  
10 Consolidated European Brands, Ltd.  
11 35 Old Queen Street  
12 London  
United Kingdom SW1H 9JD  
England

Michael J. MacDermott, Esq.  
Christie, Parker & Hale, LLP  
P.O. Box 7068  
Pasadena, CA 91109-7068  
Tel: (626) 795-9900  
Fax: (626) 577-7700

13  
14  
15  **BY PERSONAL SERVICE** I delivered such envelope(s) by hand to the office(s)  
of the addressee(s).

16  **VIA FACSIMILE** I faxed the above document to each of the above named to their  
17 respective facsimile numbers.

18  **BY MAIL** As follows: I am "readily familiar" with the firm's practice of collection  
19 and processing correspondence for mailing. Under that practice it would be deposited with the  
U.S. postal service on that same day with postage thereon fully prepaid at Beverly Hills,  
20 California in the ordinary course of business. I am aware that on motion of the party served,  
service is presumed invalid if postal cancellation date or postage meter date is more than one day  
21 after date of deposit for mailing in affidavit.

22  **STATE** I declare under penalty of perjury under the laws of the State of California  
that the above is true and correct.

23 Executed on December 13, 2011, at Beverly Hills, California.

24  
25   
26 \_\_\_\_\_  
Lena Gomes

27  
28 **"EXHIBIT 1"**

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Cancellation No. 92054923

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**CERTIFICATE OF TRANSMISSION AND SERVICE**

I certify that on March 26 2012 a true and correct copy of the foregoing document entitled **PETITIONER'S OPPOSITION TO MOTION TO SET ASIDE NOTICE OF DEFAULT** is being electronically transmitted for filing to the:

Commissioner for Trademarks  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

It is further certified that on March 26, 2012, a true and correct copy of the foregoing document entitled **PETITIONER'S OPPOSITION TO MOTION TO SET ASIDE NOTICE OF DEFAULT** is being served on counsel for Respondent by mailing a copy thereof by U.S. Postal Service, first class mail, addressed to:

Michael J. MacDermott  
Christie Parker & Hale LLP  
P.O. Box 29001  
Glendale, CA 91209-9001

Attorneys for Respondent  
Consolidated European Brands Ltd.

By: \_\_\_\_\_

Neil S. Steiner  
Attorneys for Petitioner  
Steiner & Libo, Professional Corporation  
433 N. Camden Drive, Suite 730  
Beverly Hills, CA 90210-4411  
Tel: 310-273-7778