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Filing date: **10/04/2012**

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

Proceeding	92055795
Party	Defendant E.F. Hutton Group, Inc.
Correspondence Address	EF HUTTON GROUP INC 77 WATER STREET, 7TH FLOOR NEW YORK, NY 10005 UNITED STATES
Submission	Other Motions/Papers
Filer's Name	Eric J. von Vorys
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Signature	/EricJvonVorys/
Date	10/04/2012
Attachments	Reply Pet Resp to Motion to Accept Late Answer 10-4-12.PDF (6 pages) (197416 bytes)

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

-----X
TERRENCE HASTINGS
Petitioner,
v.
E.F. HUTTON GROUP INC.
Respondent.
-----X

Cancellation No. 92/055795
Registration No. 4122970 E.F. HUTTON
Registration No. 4126754 

**REPLY TO PETITIONER’S RESPONSE TO RESPONDENT’S
MOTION TO ACCEPT LATE FILED ANSWER**

Respondent E.F. Hutton Group Inc. (“Respondent”) submits this Reply to Petitioner’s Response to Respondent’s Motion to Accept Late Filed Answer and states as follows.

Petitioner’s first assertion that Respondent’s Answer was not filed prior to Petitioner’s Motion for Default Judgment is not borne out by the Board’s own electronic filing evidence. Please see Exhibit A, the printout from TTABVUE. Respondent’s Answer is Document 5, while Petitioner’s Motion for Default Judgment is Document 6. The evidence is plain. Respondent’s Answer was indeed filed prior to Petitioner’s Motion.

In substantive response to Petitioner’s arguments, prior case law and TBMP § 312.02 clearly state that in order for the Board to enter a default judgment because of a late-filed Answer, the Petitioner must show that: (1) the delay was the result of willful conduct or gross neglect on the part of Respondent, (2) the Petitioner will be substantially prejudiced by the delay, and (3) Respondent has no meritorious defense to the action. The Petitioner has shown none of these.

Respondent has already admitted that its Answer was not timely filed. Nonetheless, Respondent states that its minor delay was not the result of its willful conduct or gross neglect, (2) the Petitioner

has not, nor can it show any facts that it will be, substantially prejudiced by the delay, and (3) Respondent has a meritorious defense to the action.

With respect to (1) above, the delay was not the result of willful misconduct to gross negligence because Petitioner's attorney discussed the appropriate responses to be set forth in the Answer with Respondent, drafted the Answer and forwarded it to Respondent for approval. The delay was due to the mismatched schedules of Respondent and its attorney during the month of August when both were unavailable for periods of a time. Upon return from his vacation, Respondent's counsel followed up with Respondent, finalized the Answer and filed it. As such, the delay was inadvertent, and not the result of willful conduct or gross neglect on the part of Respondent.

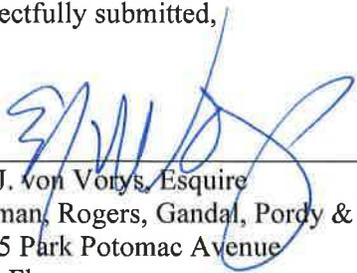
With respect to (2) above, Petitioner has not pled any reason why the minor delay has resulted in prejudice, let alone substantial prejudice to its case. In truth, Petitioner has not been prejudiced. The case is at such an early stage that Petitioner cannot have been prejudiced by such a minor delay.

Finally, with respect to (3), Respondent has already filed its Answer. Respondent has denied all of the salient points of Petitioner's Complaint and stands ready with its meritorious defense.

As a result, Petitioner has not supplied any evidence to support its claim that the Board should enter a default judgment in the instant case. For the above reasons, Respondent reiterates its request that the Board accept Petitioner's late-filed Answer.

Dated: October 4, 2012

Respectfully submitted,



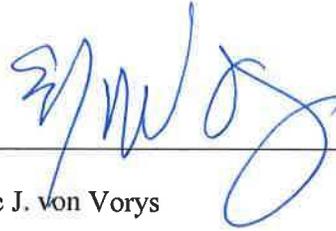
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Counsel for Respondent E.F. Hutton Group Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of October, 2012, a copy of the foregoing Reply to Petitioner's Response to Respondent's Motion to Accept Late Filed Response was sent via first class mail, to:

Jess M. Collen, Esq.
Collen IP, Intellectual Property Law P.C.
The Holyoke-Manhattan Building
Ossining, New York 10562



Eric J. von Vorys

EXHIBIT A



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Cancellation

Number: 92055795**Filing Date:** 06/29/2012**Status:** Pending**Status Date:** 06/29/2012**Interlocutory Attorney:** YONG OH (RICHARD) KIM**Defendant****Name:** E.F. Hutton Group, Inc.**Correspondence:**EF HUTTON GROUP INC
77 WATER STREET, 7TH FLOOR
NEW YORK, NY 10005
UNITED STATES**Serial #:** 85268115 [Application File](#)**Registration #:** 4122970**Application Status:** Cancellation Pending**Mark:** E. F. HUTTON**Serial #:** 85268140 [Application File](#)**Registration #:** 4126754**Application Status:** Cancellation Pending**Mark:** EF HUTTON**Plaintiff****Name:** Terrence Hastings**Correspondence:** JESS M COLLENCOLLEN IP, INTELLECTUAL PROPERTY LAW PC
THE HOLYOKE-MANHATTAN BUILDING, 80 SOUTH HIGHLAND AVENUE
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UNITED STATES
jcollen@collenip.com, docket@collenip.com, pmulhern@collenip.com**Serial #:** 85271401 [Application File](#)**Application Status:** Suspension Letter - Mailed**Mark:** EF HUTTON**Prosecution History**

#	Date	History Text	Due Date
12	10/02/2012	<u>D'S REPLY IN SUPPORT OF REQUEST TO WITHDRAW</u>	
11	09/21/2012	<u>P'S OPPOSITION TO D'S MOTION TO ACCEPT LATE-FILED ANSWER</u>	
10	09/19/2012	<u>P'S OPPOSITION TO D'S MOTION TO WITHDRAW</u>	
9	09/17/2012	<u>D'S MOTION TO ACCEPT LATE-FILED ANSWER</u>	
8	09/17/2012	<u>D'S MOTION TO WITHDRAW D'S MOTION TO STRIKE</u>	
7	09/10/2012	<u>P'S MOTION FOR DEFAULT JUDGEMENT</u>	
6	09/10/2012	<u>D'S MOTION TO STRIKE</u>	
5	09/10/2012	<u>ANSWER</u>	
4	07/06/2012	<u>P'S MOTION TO AMEND PLEADING/AMENDED PLEADING</u>	
3	07/03/2012	PENDING, INSTITUTED	
2	07/03/2012	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	08/12/2012

1 06/29/2012 FILED AND FEE

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