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

Proceeding	92057488
Party	Plaintiff A to U Services, Inc.
Correspondence Address	LESLEY M GROSSBERG WOODCOCK WASHBURN LLP CIRA CENTRE 12TH FLOOR, 2929 ARCH ST PHILADELPHIA, PA 19104 UNITED STATES lgrossberg@woodcock.com, nfrandsen@woodcock.com, trademarks@woodcock.com
Submission	Opposition/Response to Motion
Filer's Name	Lesley M. Grossberg
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Signature	/Lesley M. Grossberg/
Date	10/30/2013
Attachments	Opposition to Motion to Set Aside Default.pdf(411809 bytes)

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

In the matter of Trademark Registration No. 4,251,607
For the Mark: PRECISION SEWER SERVICES
Registered on November 27, 2012

A to U Services, Inc.,
d/b/a A to U Sewer Service,

Petitioner,

v.

Precision Sewer Services,

Registrant.

Cancellation No. 92057488

**BRIEF IN OPPOSITION TO REGISTRANT'S MOTION TO SET
ASIDE DEFAULT AND FOR LEAVE TO FILE A LATE ANSWER**

Petitioner, A to U Service, Inc., d/b/a A to U Sewer Service, a Pennsylvania corporation having its principal place of business at 52 Ridgeway Avenue, Glenolden, PA 19036, submits this response in opposition to the Registrant, Precision Sewer Services, LLC's Motion to Set Aside Default and for Leave to File a Late Answer, received by this Honorable Board on October 16, 2013. Because good cause to grant Registrant the relief sought does not exist, the Board should deny same, and enter a default judgment against Registrant. Moreover, Registrant's motion contains *ad hominem* attacks on Petitioner's counsel that must be addressed.

I. Registrant's motion is not timely, and was not served on Petitioner's counsel.

Registrant's cover letter to its motion characterizes its filing as "timely." It was not. The Notice of Default entered by the Board on September 10, 2013, gave Registrant thirty days from that date to demonstrate good cause why default judgment should not be entered against it.

Although Registrant dated its cover letter and motion October 8, 2013, the document was (1) sent via Certified Mail (*not* Express Mail); (2) not scanned as received by the Board until October 15, 2013; and (3) was not entered on TTABVue until October 16, 2013. Pursuant to 37 C.F.R. § 2.195(a), Registrant's motion is deemed filed "as of the date of receipt," and its October 15, 2013 filing is therefore untimely. Moreover, the certification of service included with that filing claims that a true and correct copy of the motion was served by U.S. Mail on counsel for Petitioner on October 8, 2013, but such service was never made. (See Grossberg Declaration at ¶ 14.)

II. Registrant has demonstrated neither good cause nor excusable neglect.

A. The Trademark Rules do not require Petitioner to have served the Petition on Registrant's counsel.

Registrant bases its entire "good cause" argument on a misguided and entirely erroneous belief that Petitioner's counsel was somehow "improper and unethical" because she served the Petition for Cancellation on the registrant, Precision Sewer Services, LLC. Contrary to Registrant's unsupported assertions, Petitioner was not required to provide a courtesy copy of the Petition to Registrant's counsel. Rather, Petitioner complied with Trademark Rule 2.111 regarding petitions for cancellation: "The petition must include proof of service on the owner of record for the registration, or the owner's domestic representative of record, if one has been appointed, *at the correspondence address of record in the Office.*" 37 C.F.R. § 2.111(b). Transmission of a petition by United States first-class mail is an acceptable means of service under the Trademark Rules. *See* 37 C.F.R. § 2.119(b)(4).

Here, the only address of record with the Office is that of Precision Sewer Services LLC, which is the only reason—*not* any ethical lapse or intentional professional discourtesy—that

service of the Petition was made directly on the Registrant rather than its attorney of record. (See Grossberg Declaration at ¶¶ 8-9 & Exhibit B, TSDR Record for U.S. Reg. No. 4251607 (showing Attorney/Correspondence Information)).

B. Both Registrant and its counsel knew of the Petition for Cancellation at least as early as July 22, 2013.

Registrant's brief never even attempts to explain why, despite being aware of the Petition for Cancellation at least as early as the date of July 22, 2013, when Registrant's counsel sent correspondence to Petitioner's counsel making a baseless demand that Petitioner withdraw the Petition, Registrant was unable to comply with the Board-instituted answer due date of August 19, 2013 – *nearly one month later*. (See Grossberg Declaration at ¶¶ 6-7 & Exhibit A, July 22, 2013 Letter from M. Burns, Esq. to L. Grossberg.) Instead, it is more likely that Registrant's failure to timely respond to the Petition, or to seek an extension of time in which to answer, is the result of Registrant's mistaken and completely unsupported belief that the Petition was of "uncertain status." (Precision Brief at 2.)¹

There is nothing uncertain or ambiguous about the Notice and trial dates sent by the Board to the Registrant on July 10, 2013, which have been publicly available and accessible for free on the TTABVUE website since that date. Petitioner's counsel did not "unethical[ly] communicat[e]" an "intent to file a Petition for Cancellation" (Precision Brief at 2); rather, Petitioner duly filed a Petition for Cancellation before this Board in accordance with the Trademark Rules. Registrant was required to respond to that Petition by August 19, 2013, and was put on notice of default and ordered to show good cause why default judgment should not be entered no later than October 10, 2013. Respondent failed to do either.

¹For some unknown reason, Registrant has not provided page numbers on its moving brief.

C. Service of the Petition was not deficient.

As established above, service of the Petition was made on the Registrant by Petitioner by U.S. mail on June 27, 2013, and further notice was provided by the Board on July 10, 2013. Registrant's counsel, by his own admission in his moving papers, was aware of the existence of the Petition at least as of July 22, 2013. (Precision Br. at 2.) Registrant now contends, in an unsworn brief, that the original service of process was "incomplete as it only contained four (4) of the seven (7) pages as noted by the page numbers at the bottom of the petition." (*Id.*)

Registrant's counsel's correspondence to Petitioner's counsel of July 22, 2013, makes no reference whatsoever to missing pages in the service copy or any other alleged inadequacy of the Petition as served. That is because no pages were missing. (See Hampton Declaration at ¶¶ 5-6.) Moreover, counsel for Registrant and counsel for Petitioner had a telephonic conference on July 22, 2013, during which counsel for Registrant made no mention whatsoever of any allegedly missing pages. (See Grossberg Declaration at ¶ 4; Frandsen Declaration at ¶¶ 3-4.) Registrant's counsel's request that Petitioner withdraw the Petition was based on his own disbelief of the well-pleaded facts in the Petition and in Petitioner's counterclaims in the concurrent civil action regarding Petitioner's priority of use of the subject design mark, *not* on insufficiency of process. Clearly, Registrant's counsel was on notice of the Petition, and apparently hoped to avoid responding to it or engaging in representation of his client before the Board. (See July 22, 2013 Letter at 1 ("[M]y client is seeking to avoid further litigation in regards to a response to the Petition for Cancellation."))

Given this history, good cause does not exist for Registrant to be permitted to file a late Answer to the Petition.

III. Registrant failed to attach a proposed Answer to its motion.

“When a defendant who has not yet filed an answer to a complaint files a response to a notice of default, or to a motion for default judgment, the late answer normally would be submitted with the response.” TBMP § 312.01. Registrant has proffered no reason for failing to attach its proposed Answer along with its late-filed, meritless Motion, providing yet another basis for denying the relief sought.

Petitioner suspects that this failure stems from Registrant’s last-dash attempt to put something together to respond to the notice of default, after being reminded of this proceeding’s existence by way of a settlement letter from Registrant’s counsel to Petitioner’s counsel dated October 7, 2013 – one day before the alleged date of the motion and three days before the period in which to demonstrate good cause in response to the notice of default would expire. This curious timing of events only serves to further demonstrate Registrant’s counsel’s inexcusable neglect of the duly filed proceeding before this Board.

IV. Conclusion

The delay in these proceedings proposed by Registrant is unreasonable. By Registrant’s counsel’s own account, he did not want to participate in these proceedings; he was irritated that service of the Petition was made on the correspondent of record rather than on himself; and he convinced himself that the Petition was therefore of “uncertain status.” There was no “uncertain status” here. A simple review of the Trademark Trial and Appeal Board records (available for free online) would have provide Registrant’s counsel with all of the information he needed in order to timely respond. That Registrant’s counsel felt a lack of professional courtesy had been extended or because he disagreed with the facts presented in the Petition is the antithesis of the excusable neglect standard, and has no basis in the Trademark Rules or Trademark Trial and

Appeal Board Manual of Procedure (both of which are publicly available and accessible for free on the Internet).

Dated: October 30, 2013

Respectfully submitted,



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Attorneys for Petitioner

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

In the matter of Trademark Registration No. 4,251,607
For the Mark: PRECISION SEWER SERVICES
Registered on November 27, 2012

A to U Services, Inc.,
d/b/a A to U Sewer Service,

Petitioner,

v.

Precision Sewer Services,

Registrant.

Cancellation No. 92057488

**DECLARATION OF LESLEY M. GROSSBERG IN SUPPORT OF
BRIEF IN OPPOSITION TO REGISTRANT'S MOTION TO SET ASIDE DEFAULT
AND FOR LEAVE TO FILE A LATE ANSWER**

I, Lesley M. Grossberg, declare as follows:

1. I am an associate at the law firm of Woodcock Washburn, LLP, counsel for Petitioner A to U Services, Inc. I submit this declaration in support of Petitioner's opposition to Registrant's motion to set aside default and for leave to file a late answer.
2. I have personal knowledge of the facts set forth in this declaration.
3. On July 22, 2013, counsel for Petitioner and counsel for Registrant conducted a telephonic conference. During that call, counsel for Registrant indicated that he was in the process of drafting a letter to me regarding the Petition for Cancellation and that he would send the letter shortly thereafter.

4. During this call, counsel for Registrant, Michael A. Burns, Esq., said nothing about the service copy of the Petition being incomplete or missing pages. He expressed disappointment regarding what he perceived as a lack of professional courtesy in that service of the Petition was made on his client, Precision Sewer Services, LLC, rather than on counsel, in light of the fact that Mr. Burns was serving as counsel to Precision in a concurrent civil action pending in the United States District Court for the Eastern District of Pennsylvania.

5. In response to Mr. Burns' statement about service of the Petition being made on the Registrant rather than counsel, I apologized to Mr. Burns for not providing him a courtesy copy of the Petition, and expressed that there was no intent to deceive anyone on my part.

6. It was clear from our conversation that Mr. Burns had notice of and had read the Petition for Cancellation as of that date, July 22, 2013.

7. The July 22, 2013 letter from Mr. Burns to me confirms that Mr. Burns had notice of and had read the Petition for Cancellation as of that date. *See* Exhibit A, 7-22-13 Letter from M. Burns, Esq. to L. Grossberg.

8. I arranged for service of the Petition for Cancellation on Registrant Precision Sewer Service, LLC, by first-class mail, prepaid, because that is what I understood Trademark Rule 2.111 to require.

9. Although Mr. Burns is listed as an attorney of record for Precision on the Board's TSDR website, his address was not provided, while Precision itself was listed as the Correspondent, complete with a mailing address. That was the case when service was made on June 27, 2013, and it remains the case today. *See* Exhibit B, TSDR Record for U.S. Reg. No. 4251607 (as it appeared on 10/29/13).

10. Counsel for Registrant represented to counsel for Petitioner for the first time during the July 22, 2013 conversation that an “agreement” existed between Precision and American Sewer Services that, in his view, called Petitioner’s claim of prior use of the subject mark into question. He asked that counsel for Petitioner withdraw the Petition for Cancellation on this basis. Counsel for Petitioner disagreed, and declined to withdraw the Petition for Cancellation.

11. The contents of the letter referred to by Mr. Burns in Registrant’s Brief in Support of Motion to Set Aside Default Judgment and for Leave to File a Late Answer, addressed to me and dated July 22, 2013, were thus addressed during the parties’ telephone conversation that occurred that same date, such that I determined that no response to that letter was required.

12. I strongly disagree with Mr. Burns’ characterization of my service of the Petition for Cancellation on Precision Sewer Services, LLC, by first-class mail, prepaid, to the Correspondent’s address of record, consistent with Trademark Rule 2.111, as “improper and unethical.”

13. I further disagree with Mr. Burns’ assertion that “counsel for Petitioner . . . ignored” his July 22, 2013 letter. Because we addressed the issues raised therein telephonically, no response was required.

14. Mr. Burns failed to make service of Registrant’s motion and supporting papers, as I have never received any copy or notice of same, notwithstanding Mr. Burns’ certification of service attached to those papers stating that service was made on me via first-class mail.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this
30th day of October, 2013.

Lesley M Grossberg

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EXHIBIT A



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July 22, 2013

Lesley M. Grossberg, Esquire
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Philadelphia, PA 19104-2891

RE: Petition for Cancellation U.S. Reg. 4,251,607: Request for Withdrawal

Dear Attorney Grossberg:

As you are aware, my office represents the interest of Precision Sewer Services, LLC in a Trademark violation suit in which you represent the interests of the Defendants, A to U Services, Inc. et al. Pursuant to a letter dated June 27, 2013, it has come to my attention you directly contacted my client with regards to notice of a Petition for Cancellation. Please find the following two (2) requests regarding this matter.

First, it is requested that you direct all correspondence regarding my client directly to my office and my attention. While this matter falls outside of the parameters of the initial suit and counterclaim we are working on together, it still involves the same parties and the same disputed mark. Thus, your professionalism and cooperation regarding this request would be appreciated.

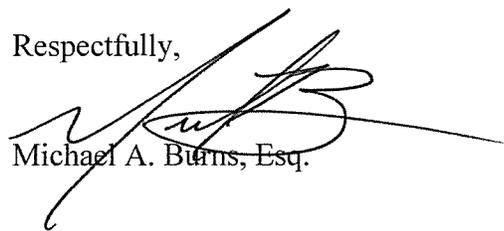
Second, you were given notice of an answer to your filed counterclaim, which I trust you had an opportunity to review. If your schedule has not permitted, I apologize for my presumptuousness and ask you to find a moment to read over our response. I would direct your attention to an issue of misrepresentation on behalf of your client's statement on record both with the Court, and now with the USPTO, that A to U Services, Inc. has been using the mark since September of 2011.

Accordingly, it is obvious that this "alleged prior use" by your client is either a direct fabrication, or a moment of error to the exact timeline of events. The written agreement of purchase between my client and American Sewer Service, Inc. poses a strong opposition to your clients' version of the events. While this dispute can be handled in discussions or motions regarding the ongoing suit, my client is seeking to avoid further litigation in regards to a response to the Petition for Cancellation.

Thus, we kindly request you withdrawal your Petition for Cancellation filed on June 27, 2013. Your withdrawal would certainly show a step towards resolution that you spoke openly about in our conference call on the 27th and may direct my client to enter into negotiations for settlement from a different position.

Should you wish to discuss your position or share your thoughts, please contact me by your preferred method of communication.

Respectfully,



Michael A. Burns, Esq.

EXHIBIT B

The USPTO will perform system maintenance on Sunday, October 27, 2013 and TSDR will be unavailable from 0:01 until 8:00 a.m. EST. We are sorry for any inconvenience this may cause.

STATUS **DOCUMENTS**

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Mark: PRECISION SEWER SERVICES



US Serial Number: 85554479

Application Filing Date: Feb. 28, 2011

US Registration Number: 4251607

Registration Date: Nov. 27, 2011

Register: Principal

Mark Type: Service Mark

Status: A cancellation proceeding is pending at the Trademark Trial and Appeal Board. For further information, see the Trademark Trial and Appeal Board web page.

Status Date: Jul. 10, 2013

Publication Date: Aug. 14, 2012

Notice of Allowance Date: Oct. 09, 2012

Mark Information

Goods and Services

Basis Information (Case Level)

Current Owner(s) Information

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Michael A. Burns

Attorney Primary Email: legal@burnslaw.org

Attorney Email Authorized: No

Address:

Correspondent

Correspondent: PRECISION SEWER SERVICES LLC

Name/Address: 1527 HUDELL AVENUE

LINWOOD, PENNSYLVANIA 19061
UNITED STATES

Phone: 610.586.1828

Fax: 610.586.208

Correspondent e-mail: legal@burnslaw.org

Correspondent e-mail Yes
Authorized:

Domestic Representative - Not Found

Prosecution History

TM Staff and Location Information

Assignment Abstract Of Title Information - None recorded

Proceedings - Click to Load

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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For the Mark: PRECISION SEWER SERVICES
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A to U Services, Inc.,
d/b/a A to U Sewer Service,

Petitioner,

v.

Precision Sewer Services,

Registrant.

Cancellation No. 92057488

**DECLARATION OF NANCY R. FRANSDEN IN SUPPORT OF
BRIEF IN OPPOSITION TO REGISTRANT'S MOTION TO SET ASIDE DEFAULT
AND FOR LEAVE TO FILE A LATE ANSWER**

I, Nancy R. Frandsen, declare as follows:

1. I am a partner at the law firm of Woodcock Washburn, LLP, counsel for Petitioner A to U Services, Inc. I submit this declaration in support of Petitioner's opposition to Registrant's motion to set aside default and for leave to file a late answer.
2. I have personal knowledge of the facts set forth in this declaration.
3. I participated in a July 22, 2013 telephone call with Registrant's counsel, along with my colleague Lesley Grossberg.
4. Although we discussed the filing of the Petition for Cancellation during that telephone call, counsel for Registrant never said anything about allegedly missing pages of the service copy of the Petition for Cancellation.

5. I have reviewed the correspondence dated July 22, 2013, attached as Exhibit A to the Declaration of Lesley M. Grossberg. That letter also contains no mention of allegedly missing pages.

6. Petitions for Cancellation and other Board proceedings are easily accessible via the TTABVUE website, such that in any case, allegedly missing pages would have been irrelevant, because all documents relating to the proceeding are available for free via TTABVUE.

7. I believe that Mr. Burns' certification of service attached to his moving papers is in error, as neither I nor Ms. Grossberg, as the attorneys associated in our office with this proceeding, have received the papers in question.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 30th day of October, 2013.



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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For the Mark: PRECISION SEWER SERVICES
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A to U Services, Inc.,
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Petitioner,

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Precision Sewer Services,

Registrant.

Cancellation No. 92057488

**DECLARATION OF ANITRA D. HAMPTON IN SUPPORT OF
BRIEF IN OPPOSITION TO REGISTRANT'S MOTION TO SET ASIDE DEFAULT
AND FOR LEAVE TO FILE A LATE ANSWER**

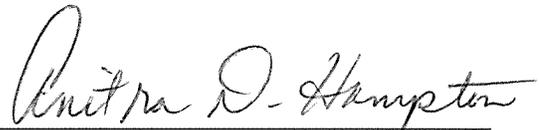
I, Anitra D. Hampton, declare as follows:

1. I am a legal assistant at the law firm of Woodcock Washburn, LLP, counsel for Petitioner A to U Services, Inc. I submit this declaration in support of Petitioner's opposition to Registrant's motion to set aside default and for leave to file a late answer.
2. I have personal knowledge of the facts set forth in this declaration.
3. I provide secretarial support to attorneys at the law firm of Woodcock Washburn, including Lesley Grossberg.
4. Ms. Grossberg directed me to prepare the service copy of the Petition for Cancellation and to send it via first-class mail, postage prepaid, on June 27, 2013.

5. On June 27, 2013, I mailed a copy of the Petition for Cancellation, along with a cover letter, to Precision Sewer Services, LLC, at the address listed on the Certificate of Service to the Petition.

6. The copy of the Petition for Cancellation was complete and was not missing any pages when I mailed it.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 30th day of October, 2013.



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Certificate of Service

I hereby certify that a copy of the foregoing brief in opposition to Registrant's motion to set aside default and for leave to file a late answer, the Declaration of Lesley M. Grossberg and accompanying exhibits, the Declaration of Nancy R. Frandsen, and the Declaration of Anitra D. Hampton were served by first-class mail, postage prepaid, upon Michael A. Burns, Esquire, counsel for Registrant, Precision Sewer Services LLC, 604 W. Ashland Avenue, Glenolden, PA 19036, on this 30th day of October, 2013.



Lesley M. Grossberg