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

Proceeding	92058054
Party	Defendant GMA Accessories, Inc.
Correspondence Address	NADIA MIRZA BOSTANY LAW FIRM PLLC 75 WALL STREET, SUITE 24F NEW YORK, NY 10005 UNITED STATES mail@bozlaw.com
Submission	Response to Board Order/Inquiry
Filer's Name	Nadia Mirza
Filer's e-mail	mail@bozlaw.com
Signature	/Nadia Mirza/
Date	12/19/2013
Attachments	Opposition.12.19.13.pdf(40083 bytes) Answer.12.19.13.pdf(34223 bytes) Cert.Service.12.19.13.pdf(14865 bytes)

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

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MORRIS VISITOR PUBLICATIONS, LLC

Petitioner,

Cancellation No. 92058054

- against -

DECLARATION OF NADIA MIRZA

GMA ACCESSORIES, INC.,

Respondent.

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Mark: CHARLOTTE

Registration No.: 3600046

Nadia Mirza, Esq., under penalty of perjury herby affirm and declare as follows:

1. I am an associate of the Bostany Law Firm, PLLC, the undersigned counsel of record for GMA ACCESSORIES, INC. (Respondent) in this Action.
2. Respondent respectfully submits this Response to the USPTO's Notice of Default dated December 17, 2013, pursuant to Rule 37 CFR § 2.127 (a) and TBMP Rule 312.02, 502.03 and 508, and the Federal Rules of Civil Procedure (as incorporated into the Trademark Rules of Practice).

BACKGROUND

1. The parties, by their counsel, were engaged in settlement discussions in September and October.
2. The Notice of Petition to Cancel and Schedule Order was mailed directly to the corporate address of Respondent GMA ACCESSORIES, INC.

3. Respondent advised the USPTO of counsel's new contact/correspondence information, on October 25, 2013, however this information was not updated by the TTAB until December 16th.
4. On December 17, 2013 the Board ordered Respondent to show cause why a default should not be entered no later than January 17, 2014 (30 days from the mailing date of the Order).
5. Respondent immediately began preparing its Answer to the Petition and this Response to the Board's December 17 Order.

ARGUMENT

6. Pursuant to Federal Rule of Civil Procedure 55(c) and TBMP Rule 312.02, Courts and the Trademark Trial and Appeal Board will set aside a notice of default by filing a satisfactory showing of good cause why default judgment should not be entered against it.
7. TBMP Rule 312.02 provides in relevant part that "good cause" is found "when the defendant shows 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. The showing of a meritorious defense does not require an evaluation of the merits of the case. All that is required is a plausible response to the allegations in the complaint." See TBMP Rule 312.02.

8. Courts have refused to enter default judgment, recognizing it as an “extreme sanction,” particularly in cases “where the filing of an Answer was but a few days late, and such filing was not coupled with any bad faith on the part of Defendants” (See *Doug Brady, Inc. v. New Jersey Bldg. Laborers Statewide Funds*, 250 F.R.D. 171, 176-78 (2008)).
9. In *Doug Brady, Inc.*, and pursuant to Federal Rule of Civil Procedure 6(b), the Court also permitted Defendants to file its Answer, even though the time for doing so had passed, as Defendants demonstrated “good cause” and “excusable neglect” (See *Doug Brady, Inc. v. New Jersey Bldg. Laborers Statewide Funds*, 250 F.R.D. 171, 176-78 (2008)).
10. The delay in filing an answer was not the result of willful conduct or gross neglect and Respondent has a meritorious defense.
11. Furthermore, Respondent should be permitted additional time to file a late Answer. The danger of prejudice is very minor here considering the fact that Respondent is seeking to file its Answer within 20 days of its original due date.
12. Respondent’s meritorious defense is show by its Answer to the Petition. A proposed Answer is respectfully annexed.
13. Thus judgment by default should not be entered against Respondent, and Respondent should be permitted to file a late answer in this matter, because Respondent’s counsel’s address changed, the delay in filing an answer was not the result of willful conduct or gross neglect, there is no danger of prejudice, and there is a meritorious defense.

CONCLUSION

WHEREFORE, Respondent respectfully requests that default should not be entered against Respondent and Respondent should be permitted to file a late answer in this matter.

Dated: New York, New York
December 19, 2013

Respectfully submitted,

THE BOSTANY LAW FIRM PLLC

s/Nadia Mirza

By: Nadia Mirza
Attorneys for Respondent
75 Wall Street, Suite 24F
New York, New York 10005
(212) 530-4400

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MORRIS VISITOR PUBLICATIONS, LLC

Petitioner,

Cancellation No. 92058054

- against -

ANSWER

GMA ACCESSORIES, INC.,

Respondent.

-----X

Mark: CHARLOTTE

Registration No.: 3600046

Defendant GMA ACCESSORIES, INC. (“Respondent”) through its undersigned counsel of record, The Bostany Law Firm, PLLC, as and for its Answer to the claims asserted in Petitioner’s

MORRIS VISITOR PUBLICATIONS, LLC (“Petitioner”) Petition for Cancellation:

1. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph “1”.
2. Admits the allegation contained in Paragraph “2”.
3. Denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraphs “3” to “9”.
4. Denies each and every allegation contained in Paragraphs “10” to “17”.
5. Paragraphs “18” and “19” contain legal conclusions and do not make any allegations requiring admission or denial.
6. Denies each and every allegation contained in Paragraph “20”.
7. Paragraphs “21” and “23” contain legal conclusions and do not make any allegations requiring admission or denial.
8. Denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph “24”.
9. Denies each and every allegation contained in Paragraphs “25” to “27”.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

First. The claims in the Petition to Cancel fail to state a claim against GMA Accessories upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Second. The claims in the Petition to Cancel are barred, in whole or in part, by the doctrines of laches, acquiescence, and estoppel.

THIRD AFFIRMATIVE DEFENSE

Third. Applicant is barred from seeking the relief requested, in whole or in part, by virtue of unclean hands.

FOURTH AFFIRMATIVE DEFENSE

Fourth. The claims in the Petition to Cancel are barred due to the Petitioner's lack of standing.

Dated: New York, New York
December 19, 2013

Respectfully submitted,

THE BOSTANY LAW FIRM PLLC

s/Nadia Mirza

By: Nadia Mirza
Attorneys for Respondent
75 Wall Street, Suite 24F
New York, New York 10005
(212) 530-4400

Certificate of Service

I, Nadia Mirza, hereby certify that The Declaration of Nadia Mirza and Answer is being deposited with the United States Postal Service on December 19, 2013, postage pre-paid, addressed to the following:

Timothy E. Moses, Esq.
Moses Law Group, LLC
6 George C. Wilson Court
Augusta, Georgia 30909

By:  _____
Nadia Mirza