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

Proceeding	92058096
Party	Defendant International Watchman, Inc.
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Submission	Motion to Suspend for Settlement Discussions
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Date	05/20/2015
Attachments	2015-05-18 -- Consent Motion for Relief From Judgment_Final.pdf(16919 bytes)

TRADEMARK TRIAL AND APPEAL BOARD

Cancellation No. 92058096
Registration Nos. 3907646 & 4093914

deBeer Watchbands,

Plaintiff/Petitioner,

v.

International Watchman Inc.,

Defendant/Registrant.

**CONSENT MOTION FOR RELIEF FROM JUDGMENT
AND TO SUSPEND THESE PROCEEDINGS FOR SETTLEMENT**

NOW COME all parties to this proceeding, through their attorneys, and respectfully request: 1) that the Default Judgment entered on May 6, 2015 be set aside per Fed. Civ. R. 60(b) and TMBP § 544; and 2) that this cancellation proceeding be dismissed pursuant to a settlement reached between the parties.

This opposition proceeding was filed by deBeer Watchbands on October 25, 2013. However, prior to these proceedings being initiated, on Sept. 9, 2013, Defendant/Registrant herein had filed a lawsuit in the U.S. District Court for the Northern District of Ohio for trademark infringement on the trademarks at issue in this cancellation proceeding; to wit - *International Watchman Inc. v. The NATO Strap Co., et al.*, Case No. 1:13-cv-1986, Judge Gaughan.

Based on the concurrent federal litigation involving the validity of the trademarks at issue, this Board suspended these proceedings pending the civil action on Dec. 17, 2013. The proceedings were resumed on Feb. 11, 2015 after all the parties inadvertently failed to respond to the Board's request for an update on the civil proceedings.

On March 26, 2015, the Board entered a Notice of Default. At all times relevant the civil action was proceeding before the federal judge. The parties entered into a settlement agreement in the civil action, and executed a Stipulated Final Order and Permanent Injunction respecting all claims between Petitioner and Registrant. The Petitioner attested to the validity of the trademarks at issue in said Stipulated Final Order. The federal Judge entered the Stipulated Final Order and Permanent Injunction on April 20, 2015 (Doc. 92 in Case No. 1:13-cv-1986).

Petitioner agreed to file a dismissal of these cancellation proceedings, but before counsel for Petitioner in the federal court action were able to make an appearance in these cancellation proceedings and do so, this Board entered Default Judgment cancelling the marks on May 6, 2015.

Based on the fact that the parties hereto entered into a settlement agreement prior to May 6, 2015, and because the parties entered into a Stipulated Final Order in the civil case, which was entered by the federal court on April 20, 2015, which acknowledged the validity of the marks at issue – the parties now respectfully and jointly request that the Default Judgment be set aside and that this cancellation proceeding be terminated.

Motions to set aside or vacate a final judgment rendered by the Board are governed by Fed. Civ. R. 60(b). See 37 CFR § 2.116(a). Rule 60(b) applies to all final judgments issued by the Board, including default judgments. In this instance, the parties jointly move for relief under Rule 60(b)(6) – that being, for “(6) any other reason justifying relief from the operation of the judgment.” Here, the procedural history between the parties in the federal lawsuit, including settlement between them, and the federal court entering a stipulated injunction, all favor relief from the Default Judgment entered by the Board. The parties hereto have agreed to the validity of the marks in their settlement agreement and in their stipulated judgment. Since the federal

court's Order (Doc. 92) is inconsistent with the Board's Default Judgment, the parties respectfully and jointly request the Board's Default Judgment be set aside and these cancellation proceedings be dismissed.

WHEREFORE, the Plaintiff/Petitioner and Defendant/Registrant, hereby jointly, by stipulation, and by consent, request that the Default Judgment be set aside and that this cancellation proceeding be terminated.

Most Respectfully Submitted,

/s/ John D. Gugliotta

JOHN D. GUGLIOTTA

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Counsel for Plaintiff / Petitioner

CERTIFICATE OF TRANSMITTAL

I certify that the attached Consent Motion for Relief From Judgment and Consent Motion to Suspend Proceedings for Settlement is being filed electronically with the TTAB via ESTTA on May 18, 2015.

/s/ John D. Gugliotta
JOHN D. GUGLIOTTA (REG. 36538)

CERTIFICATE OF SERVICE

This is to certify that the undersigned has served on this date a true and correct copy of the within and foregoing Consent Motion for Relief from Judgment and Motion to Terminate Proceedings for Settlement upon all counsel above electronically, and also by U.S. Mail to the following:

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/s/ John D. Gugliotta
JOHN D. GUGLIOTTA (REG. 36538)