

ESTTA Tracking number: **ESTTA689897**

Filing date: **08/17/2015**

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

|                           |   |
|---------------------------|---|
| Proceeding                | 92059244  |
| Party                     | Defendant<br>Newman   |
| Correspondence<br>Address | JULIE B SEYLER<br>ABELMAN FRAYNE & SCHWAB<br>666 THIRD AVENUE<br>NEW YORK, NY 10017<br>UNITED STATES<br>jseyler@lawabel.com |
| Submission                | Other Motions/Papers  |
| Filer's Name              | Julie B. Seyler   |
| Filer's e-mail            | JBSeyler@lawabel.com, Rdahl@lawabel.com   |
| Signature                 | /Julie B. Seyler/   |
| Date                      | 08/17/2015  |
| Attachments               | GORAN SERVICES V NEWMAN - MOT TO FILE LAT-FILED ANS - 92059244-8-17-15.pdf(456090 bytes )                                   |

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

In re Registration No. 4284412

|  |
|--|
| <p>Garan Services Corp.</p> <p style="text-align:center"><i>Petitioner,</i></p> <p style="text-align:center">v.</p> <p>Newman,</p> <p style="text-align:center"><i>Respondent.</i></p> |
|--|

Cancellation No. 92059244

**Motion to File Late-Filed Answer or Other Responsive Pleading**

On July 29, 2015, the Trademark Trial and Appeal Board issued an order setting aside a technical default judgment and allowing Respondent until August 7, 2015 to file its answer. With this Motion, Respondent requests that the Board accept the attached responsive pleading, attached as Exhibit C. It is respectfully submitted that the circumstances surrounding the 10-day delay in filing the Motion to Dismiss for Failure to State a Claim were beyond the control of Respondent. Further there has been no prejudice to Respondent.

The Board's order was mailed on August 5, 2015 and received in the office of Abelman, Frayne & Schwab on August 14, 2015 (Exhibit A). The undersigned learned of the order on the morning of August 17, 2015. (See Declaration of Julie B. Seyler, attached as Exhibit B). Upon learning of same, the undersigned telephoned Counsel for Petitioner to obtain consent for the 10-day delay in filing due to circumstances that were beyond and outside of Applicant's control, but Petitioner would not agree.

The circumstances related to this late-filing were beyond the control of the undersigned because the order was not mailed until August 5 and did not arrive in the undersigned's office until August 14. For these reasons, it is respectfully requested that the Board accept the attached responsive pleading (Exhibit C) as being timely.

In the July 29 order, the Board stated

In this case, the Board finds that, based upon the record, Respondent's delay in responding to the service by publication was not willful or in bad faith. Moreover, the Board finds that Respondent's 11-day delay in responding to the service by publication has not caused any significant prejudice to Petitioner aside from a slight delay in this proceeding. Furthermore, by filing its construed motion to set aside its technical default, it is clear that Respondent intends to defend its registration against the petition for cancellation. Finally, it is well-established that a trial on the merits is favored over a default judgment. See, e.g., *Information Sys. and Networks Corp. v. United States*, 994 F.2d 792, 795 (Fed. Cir. 1993).

The facts reflect that Respondent continues to have a good faith intention to defend its registration and this current delay was certainly not willful nor in bad faith. Moreover, the 10-day delay in filing the responsive pleading will not prejudice Petitioner.

Wherefore it is requested that this Motion be granted and that the attached Motion to Dismiss for Failure to State a Claim be granted as well.

Dated: August 17, 2015

Respectfully submitted,

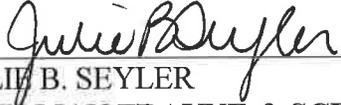
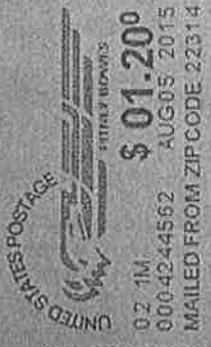
  
\_\_\_\_\_  
JULIE B. SEYLER  
ABELMAN FRAYNE & SCHWAB  
666 Third Avenue  
New York, New York 10017  
212-949-9022

EXHIBIT A



AN EQUAL OPPORTUNITY EMPLOYER

92059244  
JULIE B SEYLER  
ABELMAN FRAYNE & SCHWAB  
666 THIRD AVENUE  
NEW YORK, NY 10017

RECEIVED  
AUG 14 2015  
ABELMAN, FRAYNE & SCHWAB

Patent and Trademark Office  
Trademarks

113-1451  
Return in Ten Days

TE USE: \$300

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

In Re Registration No. 4,284,412

Exhibit B

|  |
|--|
| <p>Garan Services Corp.</p> <p style="text-align: center;"><i>Petitioner,</i></p> <p style="text-align: center;">v.</p> <p>Newman,</p> <p style="text-align: center;"><i>Respondent.</i></p> |
|--|

Cancellation No. 92059244

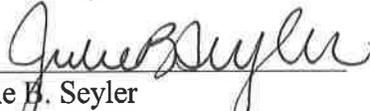
**Declaration of Julie B. Seyler**

I, Julie B. Seyler, hereby declare as follows:

1. I am a partner at the law firm of Abelman Frayne & Schwab, the law firm whom Respondent appointed as its Domestic Representative in proceedings before the Trademark Office. I have personal knowledge of the facts stated herein.
2. On July 29, 2015, the Board issued an order setting aside a technical default judgment and allowing Respondent until August 7, 2015 to file its answer.
3. The Board's order was mailed on August 5, 2015 and received in the office of Abelman, Frayne & Schwab on August 14, 2015 (Exhibit A).
4. The undersigned learned of the order on the morning of August 17, 2015.
5. Upon learning of same, the undersigned telephoned Counsel for Petitioner to obtain consent for the 10-day delay in filing due to circumstances that were beyond and outside of Applicant's control, but Petitioner would not agree.

6. Respondent continues to have a good faith intention to defend its registration
7. The delay in filing the Motion to Dismiss for Failure to State a Claim was not due to negligence or willful misconduct but a result of delayed mail.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

By:   
Julie B. Seyler

Date: August 17, 2015

Abelman Frayne & Schwab  
666 Third Avenue  
New York, New York 10017

EXHIBIT A



AN EQUAL OPPORTUNITY EMPLOYER

Patent and Trademark Office  
Trademarks

2313-1451

Return in Ten Days

STATE USE: \$300

92059244  
JULIE B SEYLER  
ABELMAN FRAYNE & SCHWAB  
666 THIRD AVENUE  
NEW YORK, NY 10017

REGISTERED  
AUG 14 2015  
ABELMAN FRAYNE & SCHWAB

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

In Re Registration No. 4,284,412

Garan Services Corp.  
  
*Petitioner,*  
  
v.  
  
Newman,  
  
*Respondent.*

Cancellation No. 92059244

**Exhibit C**

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

In re Registration No. 4284412

|   |
|---|
| Garan Services Corp.<br><br><i>Petitioner,</i><br><br>v.<br><br>Newman,<br><br><i>Respondent.</i> |
|---|

Cancellation No. 92059244

**Motion to Dismiss for Failure to State a Claim**

On May 21, 2014, Petitioner filed a Petition to cancel the above identified registration.

The preamble of the Petition alleges:

“Petitioner...is being damaged by Registration No. 4,284,412...and therefore petitions to cancel said registration.”

Paragraphs 1-6 speak to Respondent and its alleged abandonment.

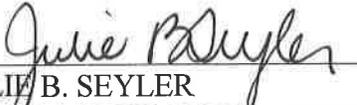
Paragraph 7 states “By reason of the foregoing, Petitioner will be damaged by the continued registration...”

Despite the use of the word “damage”, nowhere in the petition has Petitioner set forth facts which establish that it has a real interest in the proceeding or that it has a “direct and personal stake” in the outcome of the proceeding.

Wherefore it is requested that this Motion to Dismiss be granted.

Dated: August 17, 2015

Respectfully submitted,

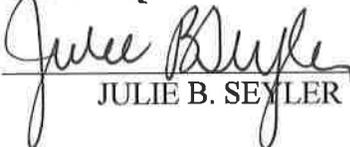
  
JULIE B. SEYLER  
ABELMAN FRAYNE & SCHWAB  
666 Third Avenue  
New York, New York 10017  
212-949-9022

## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served by email and first class mail, postage prepaid this 17<sup>th</sup> day of August, 2015 upon the following:

Via email  
[mail@ipcounselors.com](mailto:mail@ipcounselors.com)

Robert L. Epstein  
Epstein Drangel LLP  
60 East 42<sup>nd</sup> Street, Suite 2410  
New York, NY 10165

  
\_\_\_\_\_  
JULIE B. SEYLER