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

Proceeding	92059244
Party	Defendant Newman
Correspondence Address	NEWMAN 25-27 RUE DU MAIL F-75002 PARIS, FRANCE
Submission	Other Motions/Papers
Filer's Name	Julie B. Seyler
Filer's e-mail	jbseyler@lawabel.com
Signature	/Julie B. Seyler/
Date	03/23/2015
Attachments	NEWMAN Motion to Reopen Canc No 92059244.pdf(259297 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>
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Cancellation No. 92059244

**Respondent's Motion to Reopen
the Term to Respond to Service By Publication**

On February 10, 2015, the Trademark Trial and Appeal Board served Registrant by publication advising that:

notice is hereby given that unless the registrant listed herein, its assigns or legal representatives, shall enter an appearance within thirty days of this publication, the cancellation will proceed as in the case of default.

A response was therefore due on March 12, 2015.

With this Motion, Respondent moves to reopen the term for entering appearance in this case. The failure to timely appear was due to excusable neglect and Respondent, through its appointed attorney¹, seeks to make an appearance in this proceeding.

It is respectfully submitted that Respondent's failure to attend to this proceeding is a result of Petitioner's neglect and excusable neglect exists for reopening the term.

¹ A Power of Attorney and Appointment of Domestic Representative (attached) was filed at the Trademark Office on March 20, 2015.

On May 20, 2014, Petitioner filed a Petition to Cancel and served the cancellation on Petitioner at 7 rue Froissart, Paris, France.

The petition was returned as undeliverable.

Petitioner advised the Board, but it appears Petitioner never checked the official records which show (a) that Respondent's address is:

25-27 rue de Mail
F-75002 Paris, France.²

and (b) never served the firm of the undersigned which is identified as a correspondent contact.

The undersigned only became aware of this proceeding on Tuesday March 17, 2015.

The Standard for Reopening

Under Fed R. Civ. P. 6(b), applicable to Board proceedings under Trademark Rule 2.116(a) and TBMP §509.01, the moving party seeking to reopen must show that its failure to act during the time allowed was the result of excusable neglect.

In *Pioneer Investment Services Company v. Brunswick Associates Limited Partnership*, 507 U.S. 380 (1993), as discussed by the Board in *Pumpkin, Ltd. v. The Seed Corps*, 43 USPQ2d 1582 (TTAB 1997), the Supreme Court clarified the meaning and scope of "excusable neglect," as used in the Federal Rules of Civil Procedure and elsewhere. The Court held that the determination of whether a party's neglect is excusable is:

² The undersigned is aware that the Board's institution order was addressed to Respondent at its address of record. It cannot be determined if Respondent received the document and if it did whether it understood the document as it is a French company and should not be presumed to know and understand the rules of U.S. proceedings before the Trademark Trial and Appeal Board.

... at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission. These include ... [1] the danger of prejudice to the [nonmovant], [2] the length of the delay and its potential impact on judicial proceedings, [3] the reason for the delay, including whether it was within the reasonable control of the movant, and [4] whether the movant acted in good faith.

In this case, the *Pioneer* factors weigh in favor of Respondent, the movant. Furthermore, in the interests of equity and fairness, all the circumstances establish that Respondent's failure to respond to the Service by Publication within the 30-day term was excusable. Respondent's Counsel should be entitled to enter an appearance to defend Respondent's registration and so that the allegations.

A. Reopening Discovery is in the Interests of Equity

As a threshold matter, we note that under *Pioneer* and *Pumpkin*, the determination with regard to excusable neglect is "an equitable one, taking account of all relevant circumstances surrounding the party's omission". *Pioneer*, 507 U.S. at 395. It is respectfully submitted that it is in the interests of equity to reopen the term to allow for a response to be filed in connection with the service by publication.

B. There is No Danger of Prejudice to the Petitioner

Reopening the term will cause no prejudice to Petitioner. Rather, should the Board allow the entry of appearance, it is presumed that dates will be reset and Petitioner will have the opportunity to prove its case and Respondent to defend its registration on the merits.

C. The Length of the Delay and its Potential Impact on Judicial Proceedings

The undersigned became aware that Petitioner had filed a cancellation against Registration No. 4,284,412 on March 17, 2015.³ The undersigned advised Respondent who thereafter instructed the undersigned to file an appearance. There has been no unusual delay in seeking the Board's approval to reopen the term to put in an appearance. The filing of the Motion is timely.

D. The Reason for the Delay, including Whether it was Within the Respondent's Reasonable Control

The sole reason that Respondent is filing the Motion is due to Petitioner's neglect in failing to make proper service on Respondent. This action was certainly outside of Respondent's control.

Under these circumstances, the undersigned should be permitted to enter an appearance. Equity requires that Respondent be able to defend its registration on the merits.

E. Whether Movant, Respondent, Acted in Good Faith

Respondent's good faith cannot be questioned.

Conclusion

Respondent is not filing this Motion to Reopen to delay the proceedings, but to allow the cancellation to be determined on its merits and not on a technical issue because Petitioner made improper service.

³ The undersigned became aware of this proceeding when it received Notices of Default (dated February 27, 2015) with respect to two other cancellations filed by Petitioner with the same defective service.

The Federal Rules of Civil Procedure provide that a motion to reopen will be granted if the movant can demonstrate that the failure to act was the result of excusable neglect. Case law holds that a determination with respect to whether such neglect was excusable entails a consideration of all relevant circumstances surrounding the party's omission or delay. The established factors for excusable neglect, the danger of prejudice to the nonmovant; the length of the delay and its potential impact on the judicial proceedings, the reason for the delay including whether it was in the reasonable control of the movant and whether the movant acted in good faith, all weigh in Respondent's favor. Accordingly Respondent respectfully requests that the Board grant this motion.

Dated: March 23, 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 first class mail, postage prepaid this 23rd day of March, 2015 upon the following:

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



JULIE B. SEYLER

UNITED STATES

REVOCACTION	Mark:	NEW MAN Stylized
AND	Registration:	4284412
NEW POWER OF ATTORNEY	Serial No.:	
	Classes:	25
	Owner:	Newman

APPOINTMENT OF DOMESTIC REPRESENTATIVE

Abelman, Frayne & Schwab, whose postal address is 666 Third Avenue, New York, New York 10017-5621, U.S.A. is hereby designated applicant's representative upon whom notices or process in proceedings affecting the mark may be served.

POWER OF ATTORNEY

Applicant hereby revokes all previous Powers of Attorney and hereby appoints jointly and severally, with full power of substitution, the power of appointment of an associate attorney and the power of revocation

Lawrence E. Abelman	Julianne Abelman
Jeffrey A. Schwab	Thomas E. Spath
Victor M. Tannenbaum	Julie B. Seyler
Peter J. Lynfield	Marie-Anne Mastrovito
Caridad Piñeiro Scordato	Frank Terraneila

members of the Bar of the State of New York, whose address is

ABELMAN, FRAYNE & SCHWAB
666 Third Avenue
New York, New York 10017-5621, U.S.A.

to transact business in the Patent and Trademark Office in connection with our trademarks, applications therefor, and registrations which have or will issue thereon.

Date: March 18, 2015 By Mr. Maurice KAMMOUN
Name:

Title General Director

M. Kammoun
