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

Proceeding	92059305
Party	Defendant Theodore A Stoner
Correspondence Address	MATTHEW H SWYERS THE TRADEMARK COMPANY PLLC 344 MAPLE AVE W, STE 151 VIENNA, VA 22180 UNITED STATES mswyers@TheTrademarkCompany.com
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Date	04/19/2016
Attachments	Motion to Accept Late-Filed Answer.pdf(228638 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board**

In the matter of U.S. Registration 3,700,403
For the mark BONGO BI-LINGO BUDDY
Registered on the Principal Register on October 20, 2009

MWR Holdings, LLC,	:	
	:	
Petitioner,	:	
	:	
vs.	:	Cancellation No. 92059305
	:	
Stoner, Theodore A.,	:	
	:	
Registrant.	:	

MOTION TO ACCEPT LATE-FILED ANSWER

COMES NOW the Registrant, Theodore A. Stoner (hereinafter “Registrant”), by and through counsel, The Trademark Company, PLLC, and pursuant to TBMP § 508 and § 509.01(b), moves the Board for an Order reopening the time for the attached Answer and Grounds of Defense to be filed stating as follows:

STATEMENT OF FACTS

1. On or about February 10, 2006 Registrant filed the Intent-to-Use Federal Trademark Application for Registrant’s Mark in connection with “Entertainment in the nature of live theatrical performances by mixed media of live characters, puppetry and animation for children; Organizing cultural events for children; Education services, namely, providing professional training in the field of bilingual learning” in International Class 41 (hereinafter “Registrant’s goods”).
2. Registrant’s Mark was assigned Serial No. 78/812,529.
3. On or about January 1, 2008 Registrant’s Mark was published for opposition.
4. On or about March 25, 2008 Registrant’s Mark received a Notice of Allowance.

5. On or about September 1, 2009 Registrant filed Registrant's Statement of Use claiming a date of first use of June 8, 2004 and a date of first use in commerce of June 18, 2008.

6. On or about September 17, 2009 the USPTO notified Registrant that the Statement of Use had been accepted.

7. On or about October 20, 2009 Registrant's Mark was registered on the principal register.

8. Registrant's Mark was assigned Registration No. 3,700,403.

9. On June 5, 2014 MWR Holdings, LLC ("Petitioner") instituted the instant proceeding against Registrant's Mark.

10. On July 14, 2014 Registrant, through counsel, filed Registrant's Answer and Grounds of Defense to the allegations contained in the Petition to Cancel.

11. On or about April 16, 2015 Petitioner filed a Motion for Leave to Amend its Petition to Cancel.

12. On or about May 21, 2015 the Board accepted Petitioner's Amended Petition to Cancel and resetting the trial schedule.

13. On June 29, 2015 Registrant, through counsel, filed Registrant's Answer and Grounds of Defense to the allegations contained in the Amended Petition to Cancel.

14. On or about August 12, 2015 Petitioner filed a Motion for Summary Judgment and Memorandum of Law in Support Thereof.

15. On September 16, 2015 Registrant filed Registrant's Opposition to Petitioner's Motion for Summary Judgment and Registrant's Counter-Motion for Summary Judgment.

16. On or about October 6, 2015 Petitioner filed Petitioner's Further Reply in Support of its Motion for Summary Judgment.

17. On or about October 21, 2015 Petitioner filed Petitioner's Opposition to Stoner's Cross-Motion for Summary Judgment.

18. On or about November 10, 2015 Registrant filed a Reply in Support of Registrant's Counter-Motion for Summary Judgment.

19. On or about November 17, 2015 Petitioner filed a Motion to Strike certain portions of Registrant's Reply in Support of its Counter-Motion for Summary Judgment.

20. On December 7, 2015 Registrant filed an Opposition to Petitioner's Motion to Strike.

21. On or about December 23, 2015 Petitioner filed Petitioner's Reply in Support of Petitioner's Motion to Strike.

22. On or about March 25, 2016 the Board entered an order that Petitioner's Motion for Summary Judgment was moot as to insufficient fraud claim and denying both Petitioner's other claims in Petitioner's Motion for Summary Judgment and Registrant's Counter-Motion for Summary Judgment. Further the Board set out a new scheduling allowing Petitioner ten days to amend Petitioner's Petition to Cancel and Registrant ten days from the date of service of any Amended Petition to Cancel to answer the same.

23. On or about April 4, 2016 filed Petitioner's Second Amended Petition to Cancel.

24. The deadline to answer the Petitioner's Second Amended Petition to Cancel was April 14, 2016.

25. Registrant inadvertently failed to timely file its Answer and Grounds of Defense.

ARGUMENT

The issue of whether default judgment should be entered against a defendant when it fails to file a timely answer to the complaint may also be raised by means other than the Board's

issuance of a notice of default. TBMP § 508. The defendant itself, realizing that it is in default, may file a motion asking that its late-filed answer be accepted. *Id.* The standard for determining whether default judgment should be entered against the defendant, for its failure to file a timely answer to the complaint, is the Fed. R. Civ. P. 55(c) standard, which requires that the defendant show good cause why default judgment should not be entered against it. *Id.* See also TBMP § 312.

Good cause why default judgment should not be entered against a defendant, for failure to file a timely answer to the complaint, is usually 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. TBMP § 312.02. The showing of a meritorious defense does not require an evaluation of the merits of the case. *Id.* All that is required is a plausible response to the allegations in the complaint. *Id.*

The determination of whether default judgment should be entered against a party lies within the sound discretion of the Board. TBMP § 312.02. In exercising that discretion, the Board must be mindful of the fact that it is the policy of the law to decide cases on their merits. *Id.*

In the instant case the delay in filing was not as of the result of willful conduct or gross neglect on the part of the Registrant but rather a calendaring error. Due to an inadvertent clerical error the Board's ten (10) day deadline to file an Answer to Petitioner's Second Amended Petition to Cancel was not calendared properly and passed without Registrant being aware of the same. Upon a case review Registrant discovered the error and would now like to cure the same.

As a result, the delay in filing, now remedied, was not the result of willful conduct or gross neglect on the part of the Registrant.

Moreover, the Petitioner has and will not be substantially prejudiced by the delay in the instant filing. Insofar as Registrant has acted quickly to address this oversight and no request to change the instant trial schedule has or need be made. As such, the simple delay at issue is not sufficient to warrant a finding of prejudice in this regard.

Finally, as more fully set forth in the attached Answer and Grounds of Defense, Registrant retain meritorious defenses in this matter which the policy of the law favors being heard by the Board and not having the matter decided by default due to the minor delay in the filing of the instant Answer and Grounds of Defense. *See* Exhibit 1.

WHEREFORE the Registrant, by counsel, respectfully moves the honorable Board for an Order accepting its Answer and Grounds of Defense late and further holding that the Scheduling Order entered by the Board on March 25, 2016 remain in full force.

Respectfully submitted this 19th day of April, 2016.

THE TRADEMARK COMPANY, PLLC

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EXHIBIT 1

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board**

In the matter of U.S. Registration 3,700,403
For the mark BONGO BI-LINGO BUDDY
Registered on the Principal Register on October 20, 2009

MWR Holdings, LLC,	:	
	:	
Petitioner,	:	
	:	
vs.	:	Cancellation No. 92059305
	:	
Stoner, Theodore A.,	:	
	:	
Registrant.	:	

ANSWER AND GROUNDS OF DEFENSE

COMES NOW Registrant, Theodore A. Stoner (hereinafter “Registrant”), by and through counsel, The Trademark Company, PLLC, and files its Answer and Grounds of Defense to the Second Amended Petition to Cancel and in response to Petitioner’s allegations states as follows:

ANSWER

Registrant denies the allegations set forth in the Introductory Paragraph of the Second Amended Petition to Cancel and demands strict proof thereof. In response to the specifically enumerated paragraphs, the Registrant states as follows:

1. Registrant is without knowledge of the allegations set forth in Paragraph 1 of the Second Amended Petition to Cancel and therefore denies the same.
2. Registrant admits the allegations set forth in Paragraph 2 of the Second Amended Petition to Cancel.
3. Registrant denies the allegations set forth in the last two sentences of Paragraph 3 as phrased and demands strict proof thereof; otherwise, Registrant admits the allegations set forth in Paragraph 3 of the Second Amended Petition to Cancel.

4. Registrant is without knowledge of the allegations set forth in the second sentence of Paragraph 4 of the Second Amended Petition to Cancel and therefore denies the same; otherwise, Registrant denies the allegations set forth in Paragraph 4 of the Second Amended Petition to Cancel as phrased and demands strict proof thereof

5. Registrant is without knowledge of the allegations set forth in Paragraph 5 of the Second Amended Petition to Cancel and therefore denies the same.

6. Registrant is without knowledge of the allegations set forth in Paragraph 6 of the Second Amended Petition to Cancel and therefore denies the same.

7. Registrant denies the allegations set forth in Paragraph 7 of the Second Amended Petition to Cancel and demands strict proof thereof.

8. Registrant denies the allegations set forth in Paragraph 8 of the Second Amended Petition to Cancel as phrased and demands strict proof thereof.

9. Registrant denies the allegations set forth in Paragraph 9 of the Second Amended Petition to Cancel and demands strict proof thereof.

10. Registrant denies the allegations set forth in Paragraph 10 of the Second Amended Petition to Cancel and demands strict proof thereof.

11. Registrant denies the allegations set forth in Paragraph 11 of the Second Amended Petition to Cancel and demands strict proof thereof.

12. Registrant denies the allegations set forth in Paragraph 12 of the Second Amended Petition to Cancel and demands strict proof thereof.

13. Registrant admits the allegations set forth in Paragraph 13 of the Second Amended Petition to Cancel.

14. Registrant admits the allegations set forth in Paragraph 14 of the Second Amended Petition to Cancel and demands strict proof thereof.

15. Registrant denies the allegations set forth in Paragraph 15 of the Second Amended Petition to Cancel and demands strict proof thereof.

16. Registrant denies the allegations set forth in Paragraph 16 of the Second Amended Petition to Cancel and demands strict proof thereof.

17. Registrant is without knowledge of the allegations set forth in Paragraph 17 of the Second Amended Petition to Cancel and therefore denies the same.

18. Registrant denies the allegations set forth in Paragraph 18 of the Second Amended Petition to Cancel and demands strict proof thereof.

19. Registrant denies the allegations set forth in Paragraph 19 of the Second Amended Petition to Cancel and demands strict proof thereof.

20. Registrant denies the allegations set forth in Paragraph 20 of the Second Amended Petition to Cancel and demands strict proof thereof.

Registrant further denies all allegations not specifically, actually or constructively, admitted in the foregoing paragraphs of this Answer and Grounds of Defense.

WHEREFORE, Registrant prays that the Second Amended Petition to Cancel be dismissed.

Respectfully submitted this 19th day of April, 2016.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/

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Counsel for Registrant

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Petitioner,	:	
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vs.	:	Cancellation No. 92059305
	:	
Stoner, Theodore A.,	:	
	:	
Registrant.	:	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a copy of the foregoing this 19th day of April, 2016
to be served, via first class mail, postage prepaid, upon:

William W Stroeve
Greenberg Traurig LLP
200 Park Avenue, PO Box 677
Florham Park, NJ 07932-0677

/Matthew H. Swyers/
Matthew H. Swyers