

ESTTA Tracking number: **ESTTA695807**

Filing date: **09/14/2015**

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

Proceeding	92059821
Party	Defendant Mahalaxmi Exports FZE
Correspondence Address	ADAM E SCHWARTZ SCHWARTZ IP LAW PLLC 244 5TH AVENUE, #2157 NEW YORK, NY 10001 UNITED STATES aschwartz@schwartzip.com
Submission	Other Motions/Papers
Filer's Name	Adam E. Schwartz
Filer's e-mail	aschwartz@schwartzip.com
Signature	/adam e schwartz/
Date	09/14/2015
Attachments	GOLESTAN Motion to Set Aside Notice of Default.pdf(195421 bytes)

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

GOLESTAN CO.	:	Cancellation No. 92059821
	:	
Petitioner,	:	
	:	Registration Nos. 4153549 & 3915265
v.	:	
	:	Mark: GOLESTAN
MAHALAXMI EXPORTS FZE	:	
	:	
Registrant,	:	
_____	:	

**REGISTRANT’S MOTION TO
SET ASIDE NOTICE OF DEFAULT**

Registrant Mahalaxmi Exports FZE (“Registrant”), through its undersigned attorneys, moves that the Notice of Default issued August 15, 2015 be set aside and that Registrant be granted twenty (20) days to file its answer.

A Notice of Default may be set aside on a showing of cause. See Fed. R. Civ. P. 55(c); TBMP §312.02. Good cause 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.

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. Accordingly, the Board is very reluctant to enter a default judgment for failure to file a timely answer, and tends to resolve any doubt on the matter

in favor of the defendant. Id.

Registrant's delay in filing its answer was not the result of willful conduct or gross negligence. Rather, the delay was due to Registrant's non-receipt of the Board's April 7, 2015 decision on Registrant's Motion to Dismiss in which proceedings were resumed and Registrant's time to answer was reset. Registrant's counsel did not receive a copy of this paper, and the copy sent to Registrant's international address was returned to the Board as undeliverable on August 3, 2015. Schwartz Decl. at ¶2. As a result, Registrant's counsel was not aware of the new deadline to answer until it had passed. Schwartz Decl. at ¶3.

The Plaintiff will not be substantially prejudiced by the delay caused by setting aside the Notice of Default. Registrant has timely filed this motion and is not aware of any special circumstances suggesting that prejudice to the Plaintiff will occur.

Registrant also has a meritorious defense to the action. The showing of a meritorious defense does not require an evaluation of the merits of the case, it merely requires a plausible response to the allegations in the complaint. Id.; see also Djeredjian v. Kashi Co., 21 USPQ2d 1613, 1615 (TTAB 1991) (the two other factors having been shown, applicant was allowed time to show meritorious defense by submission of answer). Registrant intends to deny the core factual foundations of the Petition for Cancellation, including the allegations that there was no bona fide use of (or intent to use) the mark in commerce, Registrant is not the rightful owner of the mark, misrepresentation of source has occurred, a false association with the Plaintiff has been created and fraud was committed in the procurement of the Registration. Registrant is also considering affirmative defenses to the complaint.

In light of the foregoing, Registrant respectfully requests that the Notice of Default be set aside.

Dated: September 14, 2015

Respectfully Submitted,

SCHWARTZ INTELLECTUAL
PROPERTY LAW, PLLC

By:  _____

Adam E. Schwartz

244 5th Avenue, #2157

New York, NY 10001

p: (888)762-4511

f: (212) 937-4641

Email: aschwartz@schwartzip.com

Attorneys for Registrant

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

GOLESTAN CO.	:	Cancellation No. 92059821
	:	
Petitioner,	:	
	:	Registration Nos. 4153549 & 3915265
v.	:	
	:	Mark: GOLESTAN
MAHALAXMI EXPORTS FZE	:	
	:	
Registrant,	:	
	:	
<hr style="width: 30%; margin-left: 0;"/>		

DECLARATION OF ADAM E. SCHWARTZ

I, Adam E. Schwartz, make this declaration in support of Registrant Mahalaxmi Exports Fze’s (“Registrant”) motion to set aside the Notice of Default issued August 5, 2015.

The facts set forth herein are within my personal knowledge or information contained in my business records regularly maintained in the ordinary course of business.

1. I am the attorney representing Registrant in the above-captioned Petition for Cancellation and the attorney of record for the registration challenged therein.
2. I did not receive the Board’s April 7, 2015 decision on Registrant’s Motion to Dismiss in which proceedings were resumed and Registrant’s time to answer was reset. Further, to the best of my knowledge, this document was not received by anyone at my office.
3. As a result of not receiving the Board’s decision, I did not become aware of the new deadline to file Registrant’s answer until after it had passed.
4. I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed September 14, 2015

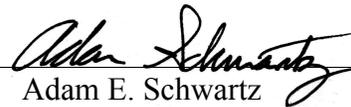
ADAM E. SCHWARTZ

Adam Schwartz

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing motion has been served this day, September 14, 2015, upon the Petitioner's counsel of record via First Class U.S. Mail by depositing copies thereof in a depository under the exclusive care and custody of the United States Postal Service in a postage-paid envelope properly addressed as follows:

Sepehr Daghighian, Esq.
Law Offices of Sepehr Daghighian, P.C.
433 North Camden Drive, Fourth Floor
Beverly Hills, CA 90210


Adam E. Schwartz

SCHWARTZ INTELLECTUAL
PROPERTY LAW, PLLC
244 5th Avenue, #2157
New York, NY 10001

Attorneys for Registrant