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Filing date: **04/25/2018**

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

Proceeding	92067767
Party	Defendant Cardan Capital Partners LLC
Correspondence Address	CARDAN CAPITAL PARTNERS LLC SUITE 640, 100 SAINT PAUL STREET DENVER, DE 80206 UNITED STATES
Submission	Other Motions/Papers
Filer's Name	B. Anna McCoy
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Signature	/B. Anna McCoy/
Date	04/25/2018
Attachments	Stipulated Motion for Acceptance of Late-Filed Answer - Cancellation No. 92067767 - Reg. No. 5343913 (as filed) , 4-25-18.pdf(89019 bytes)

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

Chardan Capital Markets LLC,)	
)	Cancellation No. 92067767
Petitioner,)	
)	Mark:
v.)	
)	
Cardan Capital Partners LLC)	
)	
Registrant.)	Reg. No. 5343913
_____)		

Commissioner for Trademarks
Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

STIPULATED MOTION FOR ACCEPTANCE OF LATE-FILED ANSWER

By stipulation of the parties, and for good cause, Registrant Cardan Capital Partners LLC (“Registrant”), respectfully submits this motion for acceptance of its late-filed answer pursuant to TBMP 312.02 and Federal Rule of Civil Procedure 55(c). Registrant has secured the express written consent of Petitioner Chardan Capital Markets LLC (“Petitioner”) for late-filing of Registrant’s Answer in this proceeding.

There is good cause why default judgment should not be entered. Good cause for setting aside a default is generally found if (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. *See Fred Hayman Beverly Hills Inc. v. Jacques Bernier Inc.*, 21 USPQ2d 1556 (TTAB 1991); TMBP 312.02. The following is submitted in support of this motion:

1. The default was not the result of willful conduct or gross neglect. The Registrant did not receive the initial Petition for Cancellation and Notice of Institution, and therefore Registrant had no notice of this proceeding or that an Answer was due.
2. The Notice of Default as to related proceeding Cancellation No. 92067766 was received and directed to the desk of an employee of Registrant who was out of the office due to illness for an extended period. After the Notice of Default was discovered, it was sent to counsel on April 18, 2018 for verification as to whether it was legitimate.
3. On April 18, 2018, Registrant's counsel reached out to Petitioner's counsel requesting consent to late entry of Registrant's Answer. Petitioner's counsel provided written consent to late entry of Registrant's Answer on April 25, 2018.
4. The Petitioner will not be prejudiced by the delay. In this regard, in addition to Petitioner's consent to entry of Registrant's Answer, it is further noted that there has been no allegation or argument of substantial prejudice by Petitioner. *See, e.g., DeLorme Publishing Co. v. Eartha's Inc.*, 60 USPQ2d 1222 (TTAB 2000); TBMP § 312.02.
5. The Registrant has a meritorious defense to this action. The issue is whether Registrant's mark is similar enough to Petitioner's mark to create a likelihood of confusion between the sources of the parties' respective services. Registrant maintains that due to the differences in the marks and services, among other reasons, there is no likelihood of confusion.

As noted at TBMP § 312.02, it is the policy of the law to decide cases on their merits, and any doubt should be resolved in favor of the defendant. Accordingly, Registrant,

Cardan Capital Partners LLC, respectfully requests that its Answer be accepted and that the Notice of Default be set aside.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "B. Anna McCoy".

Date: April 25, 2018

B. Anna McCoy
Attorney for Registrant
McCoy Russell LLP
806 SW Broadway, Suite 600
Portland, OR 97205
Telephone: (971) 271-8020
Email: mccoym@mccrus.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing STIPULATED MOTION FOR ACCEPTANCE OF LATE-FILED ANSWER was served by email upon Petitioner Chardan Capital Markets LLC at the email address of record below on this 25th day of April, 2018:

William R Samuels
Scarinci Hollenbeck LLC
3 Park Avenue, 15th Floor
New York, NY 10016

ip@sh-law.com, wsamuels@sh-law.com

A handwritten signature in cursive script, appearing to read "B. Anna McCoy".

B. Anna McCoy
Attorney for Registrant

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

Chardan Capital Markets LLC,)
)
 Petitioner,)
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 v.)
 Cardan Capital Partners LLC)
)
 Registrant.)
 _____)

Cancellation No. 92067767

Mark:



Reg. No. 5343913

Commissioner for Trademarks
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P.O. Box 1451
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REGISTRANT’S ANSWER TO PETITION FOR CANCELLATION

Registrant, Cardan Capital Partners LLC (“Registrant”), by and through its undersigned counsel, hereby answers the Petition for Cancellation filed by Chardan Capital Markets LLC (“Petitioner”) as follows:

1. As to Paragraph 1, Registrant is without knowledge of information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies said allegations.
2. As to Paragraph 2, Registrant is without knowledge of information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies said allegations.
3. As to Paragraph 3, Registrant is without knowledge of information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies said allegations.
4. As to Paragraph 4, Registrant is without knowledge of information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies said allegations.

5. As to Paragraph 5, Denied.
6. As to Paragraph 6, Registrant admits only that U.S. Patent and Trademark Office records list Petitioner, Chardan Capital Markets LLC, as the owner of a U.S. trademark registration for CHARDAN for the specific services recited in Paragraph 6 of the Petition for Cancellation (Reg. No. 4,048,647). However, as to the remaining allegations in Paragraph 6, including allegations based on Petitioner's asserted common law rights and the "CHARDAN Mark" which is understood to include the asserted common law rights, Registrant is without knowledge of information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies said allegations.
7. As to Paragraph 7, Registrant admits only that U.S. Patent and Trademark Office records list Petitioner, Chardan Capital Markets LLC, as the owner of U.S. trademark Reg. No. 4,048,647 for the mark CHARDAN, filed on March 18, 2011 and registered on November 1, 2011 for the services recited in that registration. As to the remaining allegations in Paragraph 7, including allegations regarding Petitioner's first use dates, and the validity and legal effect of Reg. No. 4,048,647, Registrant is without knowledge of information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies said allegations.
8. As to Paragraph 8, Admitted.
9. As to Paragraph 9, Denied.
10. As to Paragraph 10, Registrant is without knowledge of information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies said allegations.
11. As to Paragraph 11, Denied.
12. As to Paragraph 12, Denied.

13. As to Paragraph 13, Denied.
14. As to Paragraph 14, Denied.
15. As to Paragraph 15, Denied.
16. As to Paragraph 16, Denied.
17. Registrant expressly denies each and every allegation not expressly admitted herein.
18. Registrant reserves all rights to amend this Answer.

AFFIRMATIVE DEFENSES

1. Petitioner fails to state a claim upon which relief may be granted.



2. Registrant alleges that due to differences between Registrant's mark and Petitioner's asserted marks, and in Registrant's and Petitioner's respective services, and in Registrant's and Petitioner's respective trade channels and consumer audiences, there is no likelihood of confusion, mistake or deception between Registrant's mark and Petitioner's asserted marks.
3. Registrant reserves the right to assert additional affirmative defenses and/or counterclaims in the event discovery or further investigation in this case indicates that such defenses and/or counterclaims are appropriate.

WHEREFORE, having fully answered, Registrant denies that Petitioner could or would be damaged by the continued registration of the present trademark registration and requests that the Cancellation be dismissed with prejudice.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "B. Anna McCoy".

Date: April 25, 2018

B. Anna McCoy
Attorney for Registrant
McCoy Russell LLP
806 SW Broadway, Suite 600
Portland, OR 97205
Telephone: (971) 271-8020
Email: mccoym@mccrus.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing ANSWER TO PETITION FOR CANCELLATION was served by email upon Petitioner Chardan Capital Markets LLC at the email address of record below on this 25th day of April 2018:

William R Samuels
Scarinci Hollenbeck LLC
3 Park Avenue, 15th Floor
New York, NY 10016

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B. Anna McCoy
Attorney for Registrant