

Applicant notes that at the time of this filing, Default Judgment has not been entered against it. However, Applicant also notes that it failed to file an answer to the Board's July 14, 2003 Notice of Default and therefore, a Default Judgment is likely forthcoming. Accordingly, in order to establish that the Notice of Default, and an eventual Default Judgment should be vacated, Applicant applies the standard of "mistake; inadvertence or excusable neglect" under Fed. R. Civ. P. 60(b), rather than the "good cause" standard enumerated under Fed. R. Civ. P. 55(c).

Applicant respectfully submits that the circumstances leading to its failure to respond to the Notice of Default, described herein, constitute mistake, inadvertence or excusable neglect, under Fed. R. Civ. P. 60(b). Among the factors to be considered in determining a Rule 60(b) motion to vacate a default judgment are the following: (1) whether the non-defaulting party will be prejudiced, (2) whether the default was willful, and (3) whether defendant has a meritorious defense. See *Djeredjian v. Kashi Co.*, 21 U.S.P.Q. 2d 1613 (TTAB 1991) citing *United Coin Meter Co. Inc. v. Seaboard Coastline Railroad* 36 FR Serv2d 478, 705 F.2d 839 (6th Cir. 1983); and *Davis v. Musler*, 36 FR Serv2d 1370, 713 F.2d 907 (2nd Cir. 1983).

The reason for Applicant's default is due to internal miscommunication. The Applicant received the documents relating to this matter during a period of corporate reorganization. In the course of this reorganization, the individual charged with the responsibility of attending to this matter believed that a different internal department was now maintaining responsibility for the matter, when in fact that was not the case. Meanwhile, the officers of the company mistakenly believed that the matter was being addressed. The deadline to file an Answer to the Notice of Default had passed by the time the officers realized the problem. Immediately upon such realization, Applicant contacted the undersigned in order to submit this Motion. See Affidavit of Robert Craven, attached hereto as Exhibit 1.

Applicant submits that the reopening of this case will not prejudice Opposer. Indeed, in a telephone conference on September 26, 2003, between the undersigned and Charles Oppenheimer, Esq., attorney for Opposer, the parties reached a verbal agreement regarding the coexistence of Opposer's Registration and Applicant's Application, whereby Applicant will agree to narrow the identification of goods in its Application. During this conversation, Mr. Oppenheimer agreed that Opposer would not file an Opposition to APPLICANT'S MOTION TO SET ASIDE DEFAULT JUDGMENT.

Applicant is not aware of any injury that could result from the Board's decision to set aside default in this case. Furthermore, Applicant submits that its failure to act was not willful but rather resulted from mistake and inadvertence, as explained herein. Finally, Applicant has a meritorious defense to averments contained in Opposer's Notice of Opposition and hereby requests that the Board consider Applicant's Answer to the Notice of Opposition submitted herewith.

WHEREFORE Applicant respectfully requests that the Notice of Default and Default Judgment be vacated and that the Board enter Applicant's Answer to Notice of Opposition, thus reinstating the status of the proceeding.

Respectfully Submitted,



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Date: October 21, 2003

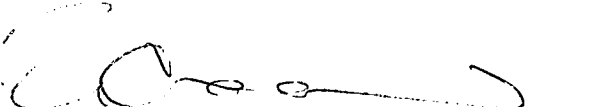
company nearly doubled in size in a short period of time and as a result, the management team was unable to maintain the organization of its executive matters, including its intellectual property matters.

4. The person who held the title of President announced his departure from the Garden of Life in early March 2003. Garden of Life received notice of the Opposition during the period of unrest and vacancy prior to my arrival. The persons who were responsible for managing the day-to-day operations of the company during this time did not maintain effective lines of communication regarding the necessary action to be taken in connection with the Application.

5. Since March 2003, Garden of Life has been undergoing a period of corporate restructuring, during which time I believed that the required actions pertaining to this Application were being handled by our administrative staff and our attorney of record for this Application. However, that was not the case.

6. Upon learning that the Application was in default, I immediately instructed Edwards & Angell to proceed to take whatever actions were necessary to preserve the Application.


7. The Application is an important business asset, which Garden of Life wishes to preserve.



Robert Craven

Sworn to before me this

20th day of October, 2003



Irene L. Rabba
Notary Public



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October 21, 2003



10-23-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

BOX TTAB/NO FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Re: Schering-Plough Veterinary Corporation v. Garden of Life, Inc.
Opposition No. 91155657
Our Ref.: 49446/59806

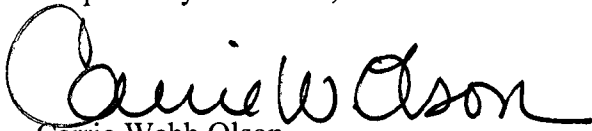
Dear Madam:

Enclosed for filing are the following for filing in the above-identified matter:

1. Applicant's Motion To Set Aside Default Judgment;
2. Affidavit of Robert Craven;
3. Applicant's Answer To Notice of Opposition; and
4. Certificate of Service

Please indicate your receipt of these documents by stamping the enclosed self-addressed, stamped post card and dropping it in the mail.

Respectfully submitted,


Carrie Webb Olson

CWO:jmc

Enclosures

Cc: Schering-Plough Veterinary Corporation
Garden of Life USA, Inc.
David J. Kera, Esq.

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