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Filing date: **04/11/2007**

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

Proceeding	91174563
Party	Defendant Groening, Matt Groening, Matt c/o Susan Grode Katten Muchin Rosenman, LLP Los Angeles, CA 90067  francie.gorowitz@kattenlaw.com
Correspondence Address	FRANCIE R. GOROWITZ KATTEN MUCHIN ROSENMAN, LLP 2029 CENTURY PARK E STE 2600 LOS ANGELES, CA 90067-3012 UNITED STATES francie.gorowitz@kattenlaw.com
Submission	Other Motions/Papers
Filer's Name	Francie R. Gorowitz
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Signature	/Francie R. Gorowitz/
Date	04/11/2007
Attachments	Groening - Motion to Set Aside Default Judgment.pdf ( 5 pages )(192638 bytes ) Groening - Gorowitz Dec. in support of Motion.pdf ( 6 pages )(200017 bytes )

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

	)	Opp. No. 91174563
Science Friday, Inc.	)	
Opposer	)	
	)	
vs.	)	
	)	
Matt Groening	)	
	)	
Applicant	)	

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**MOTION TO SET ASIDE DEFAULT JUDGMENT**

Applicant, Matt Groening, a citizen of the United States, whose address is c/o Susan A. Grode, Katten Muchin Rosenman LLP, 2029 Century Park East, Suite 2600, Los Angeles, California 90067 hereby moves the Board to set aside the Default Judgment entered on April 10, 2007.

**INTRODUCTION**

A Notice of Opposition was served on Applicant on December 14, 2006. A timely Answer was prepared and served on January 19, 2007. Gorowitz Declaration, Paragraphs 2 and Paragraph 3; and Exhibit 1.

It is not known whether the Answer was filed and not acknowledged by the PTO because of a computer error or whether the Answer was inadvertently not filed. Gorowitz Declaration, Paragraph 7.

Applicant was unaware of the Notice of Default that was served by email on February 15, 2007. Gorowitz Declaration, Paragraph 5.

Promptly after the Order entering Default Judgment was received on April 11, 2007, Applicant's counsel spoke to both paralegals at the Board handling this matter and reviewed her records to confirm the filing of the Answer. Gorowitz Declaration, Paragraph 7. No ESTTA receipt was found and thus, Applicant does not know whether the Answer was filed and not received because of a computer problem at the PTO, or whether the Answer was inadvertently not filed. Gorowitz Declaration, Paragraph 7.

### ARGUMENT

Federal Rule of Civil Procedure 60 (b) sets forth the conditions under which a judgment or order can be set aside. Pursuant to FRCP Rule 60(b)(1), a judgment or order can be set aside if it was the result of mistake, inadvertence, surprise, or excusable neglect.

To determine if the default, underlying the judgment, was the result of mistake, inadvertence, surprise or excusable neglect, the Board will consider the following factors:"(1) whether the plaintiff will be prejudiced, (2) whether the default was willful, and (3) whether the defendant has a meritorious defense to the action." TBMP Sec. 312.03

**1. The Opposer will not be prejudiced by setting aside the default judgment.**

The Answer was timely served on the Opposer on January 19, 2007. Gorowitz Declaration, Paragraph 3. As such, Opposer knew that Applicant was interested in pursuing the action and did not intend to default thereon.

This Motion is being filed 1 day after entry of Default Judgment so there is no delay. Further, there are almost three months remaining in the discovery period.<sup>1/</sup> Accordingly, Opposer will not be prejudiced by setting aside the default judgment.

**2. The default was not willful.**

Applicant prepared and timely served the Answer. Gorowitz Declaration Paragraphs 2 and 3. Applicant believed that the Answer was also filed and did not question the filing until receiving the Order entering Default Judgment on April 10, 2007. Gorowitz Declaration, Paragraphs 4 and 7.<sup>2/</sup>

As such, the default was not willful.

**3. The Applicant has a meritorious defense to the action.**

Applicant answered the Notice of Opposition because there is no likelihood of confusion between the purported use of SCI FRI by Opposer and Applicant's planned use of SCIFRI.

Opposer's asserts that its services are radio programs in the field of science and information on the Internet related to these programs. Opposer's primary mark is SCIENCE FRIDAY.

To the contrary, Applicant plans on using the mark SCI FRI with animated and live-action fictional entertainment, which is in primarily in the science fiction/comedy realm. One of the other marks that Applicant uses and plans on using is SCIENCE FRICTION.

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1/ If necessary, Applicant would stipulate to an extension of the discovery period and all other trial periods to provide Opposer with sufficient time to prepare its case.

2/ Unfortunately, Applicant's counsel was out of town handling a family emergency on February 15, 2007 when the Notice of Default was served and as a result, the Notice was inadvertently not handled. Gorowitz Declaration, Paragraph 5.

The differences in the services and the meanings of the marks as applied to the services provide Applicant with a meritorious defense.

**CONCLUSION**

Applicant has established that the default was the result of mistake, inadvertence, surprise, and excusable neglect. As such, the criteria of both Federal Rule of Civil Procedure 60(b)(1) and Trademark Board Manual of Procedure Section 312.03 have been met. Accordingly, it is respectfully requested the Board set aside the default judgment.

Dated: April 11, 2007

Respectfully submitted,

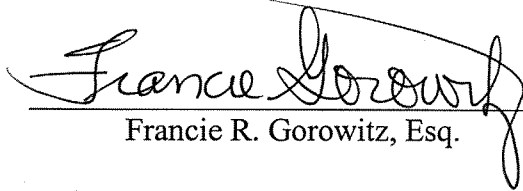
KATTEN MUCHIN ROSENMAN LLP

By:   
Francie R. Gorowitz Esq., Attorney for  
Applicant, Matt Groening

Katten Muchin Rosenman LLP  
2029 Century Park East  
Suite 2600  
Los Angeles, California 90067  
(310) 788-4495

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing, MOTION TO SET ASIDE DEFAULT JUDGMENT and the supporting DECLARATION OF FRANCIE R. GOROWITZ IN SUPPORT OF APPLICANT'S MOTION TO SET ASIDE DEFAULT JUDGMENT were served on Opposer by depositing it with the United States Postal Service as first class mail in an envelope addressed to Opposer's Attorney, David Jacobson, Gordon & Jacobson, PC, 60 Long Ridge Road, Suite 407, Stamford, Connecticut on April 11, 2007.

  
Francie R. Gorowitz, Esq.

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

Science Friday, Inc.	)	Opposition No. 91174563
	)	
Opposer	)	
	)	
vs.	)	
	)	
Matt Groening	)	
	)	
Applicant	)	
	)	

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**DECLARATION OF FRANCIE R. GOROWITZ IN SUPPORT  
OF APPLICANT'S MOTION TO SET ASIDE DEFAULT JUDGMENT**

I, Francie R. Gorowitz, declare as follows:

1. I am a Partner of the law firm of Katten Muchin Rosenman, LLP, representing Applicant, Matt Groening in this matter.
2. On January 19, 2007, I finalized Applicant's Answer to the Notice of Opposition, executed both the Answer and the Certificate of Service. A copy of the Answer to Notice of Opposition is attached hereto as Exhibit 1.
3. As is my practice, after executing the Answer and the Certificate of Service on January 19, 2007, my assistant was instructed to serve the Answer, which she did.
4. Pursuant to our established procedures, before a document is served, it is scanned in PDF format for filing. I then file the PDF copy. We have never varied from this procedure.
5. On February 15, 2007, the Board served on me by email a Notice of Default. I was out of town dealing with a family emergency and do not recall ever seeing the email. Since I was the only recipient, the Notice was neither docketed nor handled.

6. On April 10, 2007, the Board served on me by email an Order entering Default Judgment.

7. After speaking with both Ms. Ricks and Ms. Tyson, I checked both my email folders and my files to find the ESTTA receipt confirming the filing of the Answer on January 19, 2007. I could not find the receipt. I do not know whether the Answer was actually filed and I did not receive a receipt, or whether I inadvertently did not file the Answer.

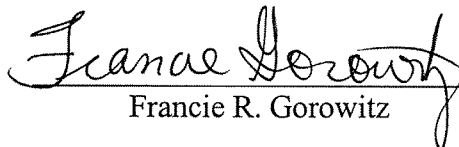
8. Since Opposer received the Answer, Opposer is not prejudiced by the filing problem.

9. The default was inadvertent and was not willful.

10. Applicant believes there is no likelihood of confusion between its use of SCI FRI in connection with its fictional entertainment services and Opposer's use of SCIENCE FRIDAY or SCIFRI in connection with a science themed radio show and website related thereto.

11. The undersigned being warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, declares that all statements of her own knowledge are true and all statements made on information and belief are believed to be true.

Date: April 11, 2007

  
Francie R. Gorowitz



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

Science Friday, Inc.	)	Opp. No. 91174563
	)	
Opposer	)	
	)	Ser. No. 78729272
vs.	)	
	)	
Matt Groening	)	
	)	
Applicant	)	

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**ANSWER TO NOTICE OF OPPOSITION**

Applicant, Matt Groening, a citizen of the United States, whose address is c/o Susan A. Grode, Katten Muchin Rosenman LLP, 2029 Century Park East, Suite 2600, Los Angeles, California 90067 hereby responds to the allegations set forth in the Notice of Opposition as follows:

1. Applicant has insufficient knowledge or information upon which to form a belief as to the truth of the allegations set forth in Paragraph 1 of the Notice of Opposition and on that basis denies said allegations.

2. Applicant has insufficient knowledge or information upon which to form a belief as to the truth of the allegations set forth in Paragraph 2 of the Notice of Opposition and on that basis denies said allegations.

3. Applicant has insufficient knowledge or information upon which to form a belief as to the truth of the allegations set forth in Paragraph 3 of the Notice of Opposition and on that basis denies said allegations.

4. Applicant has insufficient knowledge or information upon which to form a belief as to the truth of the allegations set forth in Paragraph 4 of the Notice of Opposition and on that basis denies said allegations.

5. Applicant admits that the TARR database lists a company that appears to be Opposer as the owner of App. No. 78911346 for entertainment services, namely, the production and distribution of a radio program in the field of science; the production of audio programs in the field of science and distribution of such programs via a global computer network; providing a web site featuring articles and photographs and links to related materials in the field of science, which was filed on June 19, 2006.

6. Applicant does not understand the allegation in Paragraph 6 and on that basis denies the same.

7. Applicant admits that SCI FRI and SCIFRI are similar in appearance. Applicant cannot make a legal determination that the marks are substantially identical visually and thus denies this allegation.

8. Applicant cannot determine the correct pronunciation of Opposer's purported mark, as there is no correct pronunciation of a trademark. On that basis, Applicant denies the allegations in Paragraph 8.

9. Denied

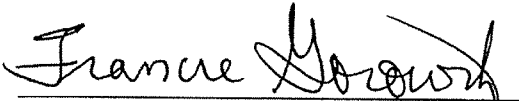
10. Denied

WHEREFORE, Applicant requests that the Notice of Opposition be dismissed.

Dated: January 19, 2007

Respectfully submitted,

KATTEN MUCHIN ROSENMAN LLP

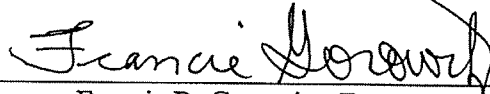
By: 

Francie R. Gorowitz Esq., Attorney for  
Applicant, Matt Groening

Katten Muchin Rosenman LLP  
2029 Century Park East  
Suite 2600  
Los Angeles, California 90067  
(310) 788-4495

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing, ANSWER TO NOTICE OF OPPOSITION was served on Opposer by depositing it with the United States Postal Service as first class mail in an envelope addressed to Opposer's Attorney, David Jacobson, Gordon & Jacobson, PC, 60 Long Ridge Road, Suite 407, Stamford, Connecticut on January 19, 2007.

  
Francie R. Gorowitz, Esq.