

ESTTA Tracking number: **ESTTA170632**

Filing date: **10/24/2007**

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

Proceeding	91178946
Party	Defendant APR Acquisition, Inc.
Correspondence Address	MARK TIDWELL JACKSON WALKER LLP 112 E. PECAN STREET, SUITE 2100 SAN ANTONIO, TX 78205-1521 UNITED STATES mtidwell@jw.com
Submission	Answer
Filer's Name	Tom Adolph
Filer's e-mail	tadolph@jw.com, mtidwell@jw.com
Signature	/Tom Adolph/
Date	10/24/2007
Attachments	AztecAnswer.PDF ( 7 pages )(207243 bytes )

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

A-AZTEC RENTS AND SELLS, INC. d/b/a AZTEC TENT  Opposer,  v.  APR Acquisition, Inc.  Applicant.	§ § § § § § § § § §	Opposition No.: 91178946  Mark: AZTEC  Application No. 78/771,480 Filing Date: December 12, 2005
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**APPLICANT’S MOTION FOR LEAVE TO FILE ANSWER  
AND RESPONSE TO NOTICE OF DEFAULT**

Applicant, APR Acquisition, Inc., moves for leave to file the attached Answer (Ex. A) and responds to the notice of default mailed by the Board October 9, 2007. The Board should grant Applicant’s motion because Applicant is timely filing its Answer in accordance with an agreement (Ex. B) between the parties in connection with settlement negotiations.


Applicant did not file an Answer by September 24, 2007 because the parties were then engaged in settlement discussions, and Petitioner had agreed that Registrant could file an Answer or otherwise respond to the Opposition by October 24, 2007. Within the agreement of the parties, Registrant’s Answer is timely, not late.

The settlement discussions and the agreed extension constitute good cause why the Board should not enter a default against Applicant. Fed. R. Civ. Pro. 55(c); TBMP §312.02 (2<sup>nd</sup> Ed., Rev. 1, March 2004). Good cause exists if the delay in the filing is not the result of willful conduct or gross neglect on the part of the defendant [Applicant], if the delay will not result in substantial prejudice to the plaintiff, and if the defendant has a meritorious defense. *See Fred Hayman Beverly Hills v. Jacques Bernier, Inc.*, 21 USPQ2d 1556, 1557 (TTAB 1991). Here, (1) Applicant seeks to file in accordance with an agreement of the parties, and there is no willful conduct or gross neglect, (2) Opposer’s agreement to the extension

establishes that the delay, if any, in the filing of the Answer will not cause prejudice to Opposer, and (3) by the submission of an answer which is not frivolous, Applicant has adequately shown that it has a meritorious defense. *Id.* Further, the Board customarily resolves any doubt on the issue of default in favor of the defending party. *See* TBMP §312.02.

Therefore, Applicant moves for leave to file the attached Answer.

Submitted by:

By:   
\_\_\_\_\_  
Mark A. Tidwell  
Reg. No. 37,456  
Tom Adolph  
Texas Bar No. 00928900  
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San Antonio, Texas 78205  
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Attorneys for Petitioner

Dated: October 24, 2007

CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2007, a copy of the foregoing Applicant's Motion for Leave to File Answer and Response to Notice of Default (Opposition No. 91178946, Serial No. 78/771,480) was served on the following, via certified, first-class mail:

Jaye G. Heybl  
Koppel, Patrick, Heybl & Dawson  
555 St. Charles Drive  
Suite 107  
Thousand Oaks, CA 91360



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Tom Adolph

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

A-AZTEC RENTS AND SELLS, INC.	§	
d/b/a AZTEC TENT	§	
	§	Opposition No.: 91178946
Opposer,	§	
	§	Mark: AZTEC
v.	§	
	§	Application No. 78/771,480
APR Acquisition, Inc.	§	Filing Date: December 12, 2005
	§	
Applicant.	§	

**APPLICANT'S ANSWER**

Applicant, APR Acquisition, Inc., answers the Opposition by Opposer, A-Aztec Rents and Sells, Inc., as follows.

1. Applicant admits the averments of Paragraph 1 of the Opposition.
2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 2 of the Opposition.
3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 3 of the Opposition.
4. Applicant admits that the date of first use is not specified in the present application. Otherwise, Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 4 of the Opposition. For clarity, Applicant notes that the remainder of the averments of Paragraph 4 relate to the beliefs of Opposer.
5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 5 of the Opposition.
6. Applicant denies the averments of Paragraph 6 of the Opposition.

7. Applicant admits that certain communications occurred on the dates identified in Paragraph 7 of the Opposition. Otherwise, Applicant denies the averments of Paragraph 7 of the Opposition.

8. Applicant admits that Exhibit A is an advertisement by Applicant. Otherwise, Applicant denies the averments of Paragraph 8 of the Opposition.

9. Applicant denies the averments of Paragraph 9 of the Opposition.

10. Applicant admits that a registration would provide rights defined by statute. Otherwise, Applicant denies the averments of Paragraph 10 of the Opposition.

#### **AFFIRMATIVE DEFENSES**

1. Opposer is barred from any relief under the doctrine of acquiescence.


2. Opposer is barred from any relief under the doctrine of laches.

3. Opposer is barred from any relief under the doctrine of waiver.

4. Opposer is barred from any relief under the doctrine of estoppel.

Applicant prays that the Board dismiss the Opposition, deny all relief requested by Opposer, and permit the registration of Applicant's mark.

Submitted by:

By:   
Mark A. Tidwell  
Reg. No. 37,456  
Tom Adolph  
Texas Bar No. 00928900  
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[mtidwell@jw.com](mailto:mtidwell@jw.com)


Attorneys for Applicant

Dated: October 24, 2007

CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2007, a copy of the foregoing Petitioner's Answer (Opposition No. 91178946, Serial No. 78/771,480) was served on the following, via certified, first-class mail:

Jaye G. Heybl  
Koppel, Patrick, Heybl & Dawson  
555 St. Charles Drive  
Suite 107  
Thousand Oaks, CA 91360

  
Tom Adolph

**Adolph, Tom**

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**From:** Jaye G. Heybl [JHeybl@koppelpatent.com]  
**Sent:** Thursday, September 20, 2007 3:36 PM  
**To:** Adolph, Tom  
**Subject:** RE: A-Aztec Rents v. APR Acquisition (097-77-014)

Yes,

-----Original Message-----

**From:** Adolph, Tom [mailto:tadolph@jw.com]  
**Sent:** Thursday, September 20, 2007 12:28 PM  
**To:** Jaye G. Heybl  
**Cc:** Tidwell, Mark; Langley, Curt  
**Subject:** RE: A-Aztec Rents v. APR Acquisition (097-77-014)

Thanks. I understand that the extension would apply to anything that would be appropriate to file at the same time as the answer, correct?

I am hopeful that we can settle this matter.

Tom Adolph

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**From:** Jaye G. Heybl [mailto:JHeybl@koppelpatent.com]  
**Sent:** Thursday, September 20, 2007 3:18 PM  
**To:** Adolph, Tom  
**Subject:** A-Aztec Rents v. APR Acquisition (097-77-014)

Hi Tim,

I am emailing to confirm my agreement to give APR Acquisition a 30-day extension to answer the Notice of Opposition in this matter.

Jaye

Koppel Patrick Heybl & Dawson  
555 St. Charles Drive, Suite 107  
Thousand Oaks, CA 91360  
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**EXHIBIT B**

10/24/2007