

ESTTA Tracking number: **ESTTA358417**

Filing date: **07/16/2010**

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

Proceeding	91194606
Party	Defendant Red I Wear, LLC
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Submission	Other Motions/Papers
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Date	07/16/2010
Attachments	Motion to Set Aside Default.pdf (4 pages)(30603 bytes)

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

IN THE MATTER OF APPLICATION:

Serial No.: : **77/753,569**
For the Mark : PINK I (stylized)
Applicant: : Red I Wear, LLC
Filed: : June 5, 2009
Published in the
Official Gazette : October 27, 2009

Atty. Docket No. RIW526.04

THOMAS PINK LIMITED

Opposer,

vs.

RED I WEAR, LLC

Applicant.

Opposition No.: 91194606

MOTION TO SET ASIDE DEFAULT

APPLICANT’S MOTION TO SET ASIDE DEFAULT

An answer in the above proceeding was due on or about June 2, 2010. On June 17, 2010, a default was entered as Applicant, RED I WEAR, LLC, (hereinafter referred to as “Applicant”) had not filed its answer. Applicant filed its answer today, July 16, 2010, and now moves to set aside such default based upon *good cause*.

Legal Standard

Good cause for setting aside a default is generally found if (1) the delay in filing is not the result of willful conduct or gross neglect, (2) the delay will not result in substantial prejudice to the opposing party, and (3) the defendant has a meritorious defense. *Delorme Publishing Co. V. Eartha’s Inc.*, 21 USPQ2d 1556, 1557 (TTAB 1991). Further, in evaluating these factors, the Board recognizes that “the law strongly favors determination of cases on their merits.” *Id.*

Argument

In the present matter, counsel for Applicant and Opposer have been engaged in discussions regarding a resolution to the present opposition. Moreover, a separate opposition was filed by Victoria Secret, for the same mark, Opposition No. 91194597. Applicant likewise was engaged in settlement discussions and ultimately resolved any issues with Victoria Secret. Applicant believed that a resolution would be reached without the need to file an Answer and seeking to conserve resources, failed to timely file the Answer. Such failure was not willful or grossly negligent.

Applicant and Opposer are still engaged in settlement discussions and it is quite likely that a resolution will be reached. There is absolutely no prejudice to Opposer as a result of this nominal delay and certainly no substantial prejudice.

Further, Applicant has strong and compelling defenses to the present opposition. The only similarity between Applicant's mark and those of Opposer is the term PINK. Such term is quite weak as it is used and registered by numerous different third parties in class 25 for use with clothing. Therefore, no one party owns or can monopolize the designation.

Conclusion

For the reasons stated above, Applicant has demonstrated good cause and respectfully requests that:

1. The default entered by set aside,
 2. The Answer filed on July 16, 2010 is accepted as the Answer of the Applicant;
- and
3. Any further relief that the Board deems just and proper.

Dated: July 16, 2010

Respectfully submitted,
/s/ Matthew A. Becker

MATTHEW A. BECKER
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I hereby declare:

I am over the age of 18 years and am not a party to this action. I am employed in San Diego, County. My business address is 1003 Isabella Avenue, Coronado, CA 92118.

On the date first written below, I served a true and correct copy of the attached document entitled:

MOTION TO SET ASIDE DEFAULT

by causing it to be placed in a sealed envelope and deposited in the United States mail, first class postage fully prepaid and addressed to the following:

Erica R. Halstead
ABELMAN, FRAYNE & SCHWAB
666 Third Avenue
New York, NY 10017

Dated: July 16, 2010

/s/ Matthew A. Becker

Matthew A. Becker