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

Proceeding	91199145
Party	Plaintiff Scott Bizar
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application Serial No. 85/064,923  
For the Mark: VILLAINS AND VIGILANTES & Design  
Published in the Official Gazette on: November 23, 2010

Scott B. Bizar, d/b/a Fantasy Games Unlimited

Opposer - Plaintiff

v.

Monkey House Games, LLC

Applicant - Defendant

Opposition No.: 91199145  
Serial No.: 85064923

**OPPOSER’S MOTION FOR DEFAULT JUDGMENT FOR FAILURE TO ANSWER**

In response to Applicant’s, Monkey House Games, LLC (hereinafter “Applicant”), untimely request for an extension of time and the Notice of Withdrawal of Counsel for Defendant in the above-captioned action, Opposer, Scott B. Bizar, d/b/a Fantasy Games Unlimited (hereinafter “Opposer”), by its counsel, hereby responds to the Motion to Extend Time and the Notice of Withdrawal of Counsel for Defendant. Opposer requests that the Board consider this response under TBMP §§ 312 and 510; 37 C.F.R. § 2.106(a).

**BACKGROUND**

On September 12, 2011, the Board ruled on Applicant’s Motion for Suspension and denied the same. In view thereof, the Board reset the opposition proceeding’s due dates, and in particular set a due date of September 29, 2011, by which Applicant should have submitted an Answer.

On October 5, 2011, Applicant, *pro se*, untimely requested a ninety (90) day extension in which to file the Answer.

On November 7, 2011, the Board deferred ruling on Applicant's untimely extension request pending the official withdrawal of Applicant's counsel of record.

On December 7, 2011, Applicant's counsel of record, Kenneth F. Levin, filed a Notice of Withdrawal of Counsel for Defendant with the Board.

### **ARGUMENTS**

37 C.F.R. § 2.106(a) states, “[i]f no answer is filed within the time set, the opposition may be decided as in case of default.” Further, if a defendant fails to file an answer to a complaint during the time allowed therefor, the Board may issue a notice of default. *See* TBMP § 312. To avoid default and reopen the time for taking the required action, a party desiring to take such action must file a motion to reopen the time for taking the action. In the motion, the moving party must show “good cause” for the failure to timely respond. *See* TBMP § 508.

In the instant case, Applicant failed to timely file an Answer before the expiration of the set deadline. As mentioned above, Applicant did not file an Answer by the September 29, 2011 deadline set forth by the Board. Accordingly, Opposer respectfully requests the Board to enter default judgment against Applicant.

Applicant has also failed to show “good cause” for requiring any extension of time to file the Answer. Applicant's filing on October 5, 2011 indicates merely that Applicant is “currently without legal representation,” and provides no further details, facts, or information pertaining to the withdrawal of counsel, such as, for example, why counsel is withdrawing at such a critical juncture. What's more, the Notice of Withdrawal of Counsel for Defendant does not provide any additional information. In fact, the Notice of Withdrawal of Counsel for Defendant falls well

short of the requirements set forth in TBMP § 508. In § 508, it states that any withdrawal by counsel must be “based upon one of the grounds for mandatory or permissive withdrawal listed in 37 CFR § 10.40(b) and 37 CFR § 10.40(c)” and counsel “must comply with the requirements of 37 CFR § 10.40(a).” In accordance with these rules, a request for permission to withdraw should include, at the very least “a specification of the basis for the request” and “a statement that the practitioner has notified the client of his or her desire to withdraw from employment, and has allowed time for employment of another practitioner.” *See* 37 CFR §§ 10.40(a)-(c) (emphasis added). Moreover, the facts related to the above must be set forth in detail. *See SFW Licensing Corp. and Shoppers Food Warehouse Corp. v. Di Pardo Packing Limited*, 60 USPQ2d 1372 (TTAB 2001). Perhaps most importantly, a request to withdraw from representation may not be used as a subterfuge to obtain an extension or reopening of time that a party would not otherwise be entitled to. *See Id.*

Opposer asserts that the insufficient request for withdrawal of representation is not sufficient to satisfy a showing of “good cause” and is merely a subterfuge for obtaining a reopening of time that Applicant is not entitled to, as the time period for filing an Answer is expired. The request for withdrawal of representation did not provide any basis for the request and was not made prior to the expiration of the time period for filing the Answer to allow time for employment of another practitioner. Opposer believes that counsel for Applicant was well aware of the September 29, 2011 deadline to file the Answer. As such, Opposer contends that the request for withdrawal of representation is merely another attempt on behalf of Applicant to delay, or even avoid, the current opposition proceeding. Moreover, despite informing the Board more than sixty (60) days ago of a lack of legal representation, Applicant has not indicated to the Board a desire or intent to appoint a new attorney or to represent itself in the case. It follows that

Applicant appears to have no interest in meeting its requirement to file an Answer and reach the merits of the case.

In view of the above, Opposer respectfully requests the Board to enter default judgment against Applicant. Or, at the very least, Opposer respectfully requests the Board to issue an order to show cause why default judgment should not be entered against Applicant based on the party's apparent loss of interest in the case.

Respectfully submitted,  
Schmeiser, Olsen & Watts LLP

Dated: December 22, 2011

By: Brandt D. Madsen/  
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Games Unlimited

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing OPPOSER'S MOTION FOR DEFAULT JUDGMENT FOR FAILURE TO ANSWER has been served by U.S. Mail, postage prepaid upon:

Kenneth F. Levin  
Attorney for Defendant (Licensed in IL)  
3100 Dundee Road, Suite 307  
Northbrook, IL 60062

and

Monkey House Games, LLC  
410 Westwood Court B  
Crystal Lake, IL 60014

this 22<sup>nd</sup> day of December, 2011

                        /Brandt D. Madsen/  
Brandt D. Madsen

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing OPPOSER'S MOTION FOR DEFAULT JUDGMENT FOR FAILURE TO ANSWER has been filed with the Trademark Trial and Appeal Board on the date indicated below online through the ESTTA system of the United States Patent and Trademark Office.

this 22<sup>nd</sup> day of December, 2011

                        /Brandt D. Madsen/  
Brandt D. Madsen