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

Proceeding	91207357
Party	Defendant Wisteez, LLC
Correspondence Address	KIMBERLY REDDICK RED IP LAW PLLC 1701 PENNSYLVANIA AVENUE NW, SUITE 300 WASHINGTON, DC 20006 UNITED STATES kreddick@rediplaw.com
Submission	Other Motions/Papers
Filer's Name	Kimberly Reddick
Filer's e-mail	kreddick@rediplaw.com
Signature	/knr/
Date	03/16/2015
Attachments	Wisteez Motion to Set Aside Notice of Default.pdf(97000 bytes)

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

In re Application of)
Wisteez, LLC)
Appl. Nos.: 85/381,990 and 85/382,135)
Published: August 10, 2012)
Trademarks: W and design)
 WISTEEZ and design)

Chicago Cubs Baseball Club, LLC and)
Washington Nationals Baseball Club, LLC)
 Opposer,)
 v.)
Wisteez, LLC)
 Applicant.)

Opposition No. 91207357

Motion to Set Aside Notice of Default

Applicant Wisteez, LLC, a California Limited Liability Company with its address at 1982 Laguna Dr., Hayward, CA 94545 (hereinafter “Applicant”), hereby files this Motion to Set Aside the Notice of Default entered on February 13, 2015, in connection with U.S. Trademark Application Nos. 85/381,990 and 85/382,135 for the marks W and design and WISTEEZ and design. Contemporaneously with the filing of this Motion, Applicant is filing its Answer to the Consolidated Notice of Opposition.

I. The Motion to Set Aside the Notice of Default is for Good Cause.

The standard for setting aside a Notice of Default is good cause. Good cause for failure to file a timely answer is generally found when (1) the delay in filing the answer was not the result of willful conduct or gross neglect on the part of the Applicant, (2) the Opposer will not be substantially prejudiced by the delay, and (3) the Applicant has a meritorious defense to the action. *TBMP* §312.02. Applicant satisfies all of these elements.

A. Applicant's Delay in Filing the Answer was not Willful and did not Constitute Gross Neglect

The Notice of Opposition was filed electronically on October 8, 2012. On November 6, 2012, Plaintiff filed a stipulated Motion to Suspend the proceedings pending settlement. Since then, Opposer and Applicant have been working together with the intention of resolving the matter amicably. The parties are in the midst of negotiating a draft settlement agreement.

The last communication between Applicant and Opposer's counsel regarding the proposed settlement agreement prior to the issuance of the Notice of Default was February 9, 2015. On that date, Applicant communicated to Opposer that it would be forwarding a revised draft of the agreement. At that time, Applicant also requested stipulation to further suspension of the proceedings to finalize negotiations because Applicant believed the proceedings remained suspended. However, the notice of default was issued on February 13, 2015. As Applicant has been working to resolve the matter with Opposer and intends to continue negotiations or defend the opposition if necessary, Applicant asserts that its failure to timely answer was not willful and did not constitute gross negligence.

B. The Opposer will not be substantially prejudiced by the delay

In this case, the Opposer will not be prejudiced by the delay in response. Applicant's delay in responding to the Notice of Opposition has not caused Opposer to expend any time, money or resources to compel Applicant's Answer. Opposer and Applicant have been engaged in settlement negotiations and have the intention to resolve this matter amicably. If the Board sets aside the Notice of Default, Applicant and Opposer will likely settle the matter, but if not, Opposer will have ample opportunity to make its case. Accordingly, it is submitted that Opposer has not been and will not be substantially prejudiced.

C. Applicant has a meritorious defense to the Notice of Opposition

The showing of a meritorious defense does not require an evaluation of the merits of the case. All that is required is a plausible response to the allegations in the complaint. *TBMP* §312.02. Applicant has a meritorious defense to the Notice of Opposition in that it is the exclusive owner of the WISTEEZ and W marks, and Opposer will not suffer any loss due to registration of Applicant's mark. Applicant has filed simultaneous herewith its Answer to the Consolidated Notice of Opposition

According to the Trademark Trial and Appeal Board Manual of Procedure, the Board may exercise its sound discretion in determining with to enter a Default Judgment. *TBMP* §312.02.

“In exercising that discretion, the Board must be mindful of the fact that it is the policy of the law to decide cases on their merits. Accordingly, the Board is very reluctant to enter a default judgment for failure to file a timely answer, and tends to resolve any doubt on the matter in favor of the defendant.”

Keeping in mind that it is the policy of the law to decide cases on their merits, the Board should liberally construe the statute in the instant matter and grant the Motion. Applicant has

demonstrated good cause for why the answer was not timely filed. Applicant believed the proceedings to be in suspension and inadvertently missed the deadline, Opposer will not be substantially prejudiced, Applicant has a meritorious defense and is contemporaneously filing responsive papers to the Consolidated Notice of Opposition.

WHEREFORE, Applicant respectfully prays that Motion to Set Aside the Notice of Default be granted.

Respectfully submitted,

WISTEEZ, INC.

Dated: March 15, 2015

By: 

Kimberly N. Reddick
Attorney for Applicant, DC Bar

RED IP LAW PLLC
1701 Pennsylvania Ave., NW
Suite 300
Washington, DC 20006
E-mail: kreddick@rediplaw.com

CERTIFICATE OF SERVICE

I certify that on this 15th day of March, 2015, a copy of the foregoing Motion to Set Aside Notice of Default was served, by First Class Mail, on Opposer's counsel at the following address of record:

Lindsay M. Rodman, Esq.
Cowan, Liebowitz & Latman, P.C.
1133 Avenue of the Americas
New York, New York 10036-6799



Kimberly Reddick, Esq.