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

Proceeding	91215114
Party	Plaintiff Upper Shirley Vineyards, LLC and Shirley Plantation LLC
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SHIRLEY PLANTATION, LLC,  
UPPER SHIRLEY VINEYARDS, LLC,  
and  
CHARLES H. CARTER,

*Opposers,*

v.

STILLHOUSE VINEYARDS, LLC

*Applicant.*

Opposition No.: 91215114 (parent)  
91216395  
91218094

Application Nos.: 85/947562  
85/121979  
86/129686

Marks: SHIRLEY PLANTATION  
SHIRLEY



**OPPOSERS' REPLY IN FURTHER SUPPORT OF ITS MOTION FOR DEFAULT**

Opposers, Shirley Plantation, LLC, Upper Shirley Vineyards, LLC and Mr. Charles H. Carter (“Opposers”) hereby files its reply in support of its motion for default against the Applicant, Stillhouse Vineyards, LLC (“Stillhouse”). Applicant’s response should be denied and default judgment entered against it because: (a) Applicant failed to show good cause in its response, as required by Fed. R. Civ. P. 55(c), (b) Applicant’s further delay was the result of willful conduct and/or gross neglect, (c) Opposers have been prejudiced by Applicant’s delay, and (d) even now, Applicant has still not complied with the Board order.

*Applicant Failed to Show Good Cause*

Applicant’s response fails to explain nearly eleven (11) months of inactivity and Applicant’s failure to comply with a Board order. Applicant uses terms such as “extraordinary

circumstances” and “accidental failure” without giving any factual basis or evidence to support these claims. There is no “cause” set forth for the delay, let alone the “good cause” required.

*Applicant’s Delay was Willful Conduct and/or Gross Neglect*

Applicant states that Mr. Jarrod Thomas left Strother Law Offices, PLC in July 2015, but gives no reason why alternate counsel was not sought before May 2016. Additionally, if Mr. Thomas indeed left the firm in July 2015, at the very least the correspondence addresses should have been updated with the Board to reflect Mr. Thomas’ departure, as well as notifying opposing counsel of the change. Applicant further failed to respond or notify opposing counsel and the Board of Mr. Thomas’ departure after the Board issued its order of November 18, 2015. Among the multiple requirements made of Applicant in said order, Applicant was to remove Mr. Strother’s contact information from the record. At this point, Mr. Thomas would have been gone for five (5) months and his absence made it impossible for Applicant to comply with the Board’s order, as pointed out in Opposers’ December 18, 2015 Notice to the Board. Applicant again failed to respond to the Board’s November 18<sup>th</sup> order and Opposers’ December 18<sup>th</sup> notice.

Applicant’s response filed May 30, 2016 claims that Applicant’s delay was not the result of willful conduct or gross neglect and cites *Kleckner v. Glover Trucking Corp.*, 103 F.R.D. 553 (M.D. Penn. 1984). However, in *Kleckner*, the Board found that Applicant’s failure to “respond in any way for nearly six months evidences an objective intent not to defend [the] opposition, or at the very least, amounts to gross neglect” and Applicant’s delay “was the result of applicant’s willful conduct and gross neglect.” In the present opposition, Applicant has delayed for nearly eleven (11) months and has repeatedly ignored multiple opportunities to correct the situation but has taken no steps to do so. Even if the clock did not start running for Applicant until the Board’s

order, Applicant has delayed for at least six (6) months. Under Kleckner, the unexplained delay and the absence of activity establishes “willful conduct” and “gross neglect” that forms the basis for a proper dismissal.

Additional Remarks

Applicant’s response is also riddled with references to “actual” and “increased confusion” supposedly asserted by Opposers’ in their Motion for Default Judgment. However, Opposers took no such position on these points in their Motion for Default Judgment and only provided evidence that Opposers’ have been further prejudiced by Applicant’s Delay.

The Board’s order further states Applicant is “to provide Opposers with information about what steps have been taken and put in place to so screen Mr. Strother.” Applicant has supplied no such information. Applicant’s only statement bearing on this portion of the order states “Mr. Strother retained the services of M. Justin Griffin” and “counsel will make every effort to screen any confidential or trade secret information from him.” However, Mr. Strother represented to Opposers’ counsel that “Mr. Griffin recently joined Strother Law Of Counsel” and in fact both Strother Law Offices, PLC (Mr. Strother’s firm) and Virginia Small Business Law, PLLC (Mr. Griffin’s named firm) share the same postal address. Applicant’s assertion to “make every effort to screen” hardly complies with the Board’s order.

Conclusion

Applicant’s response is incomplete and yet another example of Applicant’s lack of respect for the TTAB proceedings and this consolidated opposition. Applicant has continually delayed, missed deadlines and provided incomplete replies showing continual disrespect to both

the process and Opposers as well as Opposers' rights. Opposers' respectfully request that the Opposition be dismissed in favor of Opposers and the registrations of the applications be denied.

WHEREFORE it is requested that the Board enter a default judgment against Applicant.

Date: June 9, 2016

Respectfully submitted,

*/s/Kristen M. Hoover*

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*Attorneys for Opposers*

## **CERTIFICATE OF ELECTRONIC TRANSMISSION**

The undersigned hereby certifies that on this 9<sup>th</sup> day of June 2016, the foregoing *OPPOSERS' RESPONSE TO APPLICANT'S OPPOSITION AND MOTION FOR LEAVE* was deposited with the United States Patent and Trademark Office, Trademark Trial and Appeal Board via electronic filing through their website at <http://estta.uspto.gov/>.

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 9<sup>th</sup> day of June 2016, the foregoing *OPPOSERS' RESPONSE TO APPLICANT'S OPPOSITION AND MOTION FOR LEAVE* was served upon Applicant by delivering a true and correct copy of same to counsel for Applicant electronically and via first class mail, as follows:

Virginia Small Business Law, PLLC  
15 E Franklin St  
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UNITED STATES  
[justin.griffin@vasmallbusinesslaw.com](mailto:justin.griffin@vasmallbusinesslaw.com)

Date: June 9, 2016

*/s/Kristen M. Hoover*

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Kristen M. Hoover, Esq.  
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