

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

IN THE MATTER OF Application Ser. No. 86/182052 for the trademark VITAMIN BLUE
(Class 32), filed Feb 2, 2014 and published in the Official Gazette on Jan. 13, 2015

VDF FUTURECEUTICALS, INC.,)

Opposer,)

)

Opposition No. 91221928

v.)

Trademark: VITAMIN BLUE

)

Serial No.: 86182052

Owen Ryan)

Applicant, Pro Se)

APPLICANT'S REQUEST TO RESCIND DEFAULT JUDGEMENT

Pursuant to 37 CFR §§ 2.127 and 2.116 and Federal Rules of Civil Procedure 56. Applicant, Owen Ryan (the "applicant") appearing Pro Se asks the Board to rescind its default Judgment of Oct. 26, 2016 based on the extenuating circumstances detailed below.

BACKGROUND

On January 13, 2015, Applicant's trademark was published for opposition. The goods covered were "*Non-alcoholic beverages, namely soft drinks and fruit juices containing vitamins*". Opposer opposed said mark on July 1, 2015 alleging likelihood of confusion. On October 26, 2016 the Board issued a Default Judgment as Applicant had not responded to Opposer's requests in the time allowed.

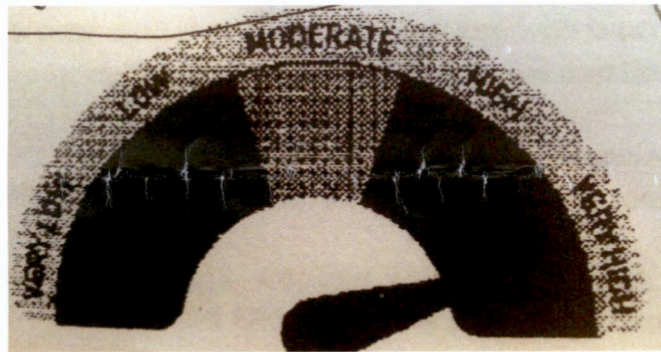
What follows is Applicant's explanation for the lack of a timely response:



APPLICANT'S EXPLANATION TO THE BOARD

Applicant is a lifelong and highly-experienced beverage industry entrepreneur and had intended to fully respond in this important matter but was impaired in his ability to do so by: a) the withdrawal from the case of Applicant's highly-experienced and long time trademark counsel in May of 2016 (for financial reasons only), and, more importantly, the accelerated growth of a life-threatening illnesses (cancer) originally diagnosed in Applicant in April of 2011. At that time Applicant's risk was rated by Applicant's medical team at Charlotte NC's Novant Presbyterian Hospital Medical Center, in terms of both fatality implications and likelihood of recurrence post treatment, as being "*extremely low risk*". In June 2015, despite continuing treatment, including physically-debilitating cancer-blocking chemicals, Applicant's medical condition had experienced a rapid and unexpected acceleration to a rating of "*extremely high risk*,"

June 2015 Summary graphic from Applicant's "VERY HIGH RISK" Biopsy & DNA test.



In the late summer and fall of 2015 through winter of 2016 a series of more urgent medical testing and surgeries followed, including surgical insertion of radioactive emission devices at the tumor site, concurrent use of high-dose chemical and aggressive hormonal applications aimed at slowing tumor growth, followed by over 30 consecutive

days of in-hospital external high beam radiation treatments, followed by additional treatment with debilitating chemical compounds, and, an extremely challenging post-operative physical recovery and rehab period (ongoing) leaving Applicant -- by then 70 years old-- with reduced physical, emotional and "mental concentration stamina," and, severely depleted physical energy.¹

While still weak, Applicant's recovery has now progressed to where Applicant has returned to work on a part time basis as of August 2016, and more positively, recent diagnostic reports (Sept and Oct of 2016) report the first encouraging news in years indicating that an ongoing recovery is possible.

(A detailed report on the June 2015 Metamark lab biopsy was shared with Opposer by Applicant's former attorney on Feb 1, 2015. Applicant asks that personal medical information herein regarding Applicant's health be treated as confidential.)

APPLICANT'S WIFE DIAGNOSED AND OPERATED ON FOR BRAIN TUMOR

At roughly the same time (from early 2013 thru June 2016, Applicant's wife and business partner Myung Sook Kim had been diagnosed with a brain tumor, which also started to exhibit accelerated growth in early 2015, resulting in blackouts, falls, fainting spells, and memory problems. Because of inherent dangers in any neurosurgery

¹ Nervous system side effects and physical side effects experienced by Applicant (and commonly associated with this class of leuprolide acetate "chemical castration" drugs) included: reduction of energy, near constant dizziness, occasional blurred vision, on and off numbness & pain in the arms, short-term memory loss, insomnia, excessive weight gain, depression and emotional mood swings.

procedure requiring open skull surgery and surgical intrusion into the brain area, and, the need of Applicant and Applicant's wife to care for their then 8 year old daughter, surgery to remove this still slow-growing mass (tumor) was put off until life events or the tumor's growth left no option but surgical intervention. As with Applicant's tumor, Applicant's wife's condition experienced an unexpected worsening and an increased growth spurt causing additional pressure on her brain, and on July 27, 2016, this tumor was removed by noted brain surgeon Dr. Hunter Dyer at Novant Presbyterian Medical Center in Charlotte NC and the prognosis for a hopefully full and unimpaired recovery over the next 8 to 12 months is positive.

The bulk of these stressful and uncontrollable medical events -- particularly as revised diagnosis and more aggressive treatment ensued -- occurred over the last 12 - 14 months when intense focus on the VITAMIN BLUE legal matter was needed.

These combined legal and medical issues in turn generated an untenable financial burden for Applicant's family and small business, engendered by both the high cost of needed but only partially-reimbursed medical treatments, and unreimbursed cost of medical-and expert second opinions. This was followed post-surgery by unanticipated and physically, psychologically draining, and emotionally debilitating side effects (e.g. depression, loss of stamina, inability to focus and work productively) from both surgical and radiation procedures, and from the still ongoing and debilitating impact of multiple administrations of testosterone-reduction drugs.

This tsunami of increasing medical challenge delivered to Applicant and Applicant's wife a flood of unavoidable events and hard choices, such as Applicant's inability to work and being without income for 18 months, and Applicant's wife – his

partner -- being unable to work for six to eight months, causing depletion of both business and personal savings. This stressful economic time was amplified by Vitamin Blue legal expense needed to support a robust trademark defense against an entity where the economic disparities between Opposer and Applicant were already huge to begin with, (in turn leading to Applicant's excellent trademark counsel withdrawing from this case in May of 2015 for solely financial reasons.) Since then, Applicant has engaged in and continues to seek legal help in what so far has been a fruitless mission – soliciting pro bono or reduced fee legal assistance, so remains Pro Se as of this date.

SUMMARY

For the extenuating reasons cited above, Applicant asks the Board to rescind the Default Judgment in this matter. Applicant also humbly apologizes to the Board and to Opposer, that in the difficulties Applicant faced in dealing with the challenges detailed herein, that Applicant did not earlier alert the Board to the circumstances he was dealing with. In normal times Applicant would never fail to timely respond to important legal and trademark matters and aggressively defend Applicant's legitimate trademark rights, as Applicant has worked hard and in diligent entrepreneurial fashion on the Vitamin Blue brand, and looks forward to presenting Applicant's case to the Board.

Respectfully submitted by,

/Owen Ryan/

Owen Ryan, Applicant

CERTIFICATE OF SERVICE

I certify that on November 25, 2016, I caused one copy of the foregoing Brief to be served by United States Postal Service, first-class mail postage prepaid, upon:

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By,

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Owen Ryan, Applicant

STET (IGNORE "X") Owen Ryan

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By:

/Owen Ryan/

Owen Ryan, (Applicant) Pro Se

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