

ESTTA Tracking number: **ESTTA818267**

Filing date: **05/02/2017**

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

| | |
|---------------------------|--|
| Proceeding | 91232732 |
| Party | Defendant 47 / 72 Inc. |
| Correspondence Address | 47 /72 INC 900 EAST 1ST ST #110 LOS ANGELES, CA 90012 UNITED STATES |
| Submission | Response to Board Order/Inquiry |
| Filer's Name | Mike Lin |
| Filer's e-mail | mikelinsf@gmail.com |
| Signature | /Mike Lin/ |
| Date | 05/02/2017 |
| Attachments | 2017.05.02SetAside-JustKeepSwimming.pdf(73195 bytes) |

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

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|--------------------------|---|--------------------------|
| Disney Enterprises, Inc, |) | |
| Opposer, |) | Opposition No. 91232732 |
| |) | |
| V. |) | Mark: JUST KEEP SWIMMING |
| |) | |
| 47 72 Inc., |) | Serial No. 87086259 |
| Applicant. |) | |

Motion to Set Aside Notice of Default for Good Cause

Applicant, 47 | 72 Inc. hereby moves the Board to set aside the default, entered in Opposition No. 91232732 on May 2, 2017, for good cause and to accept Applicant's Answer submitted with this Motion.

I. Good Cause Exists for Setting Aside the Notice of Default.

Whether default judgment should be entered against a party is determined in accordance with Fed. R. Civ. P. 55(c), which reads in pertinent part: "The Court may set aside an entry of default for good cause." As a general rule, good cause to set aside a defendant's default will be found where (A) the defendant's delay has not been willful or in bad faith, (B) when prejudice to the plaintiff is lacking, and (C) where the defendant has a meritorious defense. See *Fred Hyman Beverly Hills, Inc. v. Jacques Barnier, Inc.*, 21 USPQ2d 1556 (TTAB 1991). Applicant can satisfy all three elements of good cause, thus an order setting aside the

notice of default is proper here. Applicant's delay in filing an answer was not willful and does not constitute gross 2 neglect.

As a small business owner and entrepreneur who has filed numerous trademarks for his T-Shirt company, Applicant has been busy with representing pro se for other oppositions while still working with his designer to create designs. However, Applicant took steps to file to represent pro se and cause this Motion to be filed, as soon as practicable and before the time to respond to the Board's Notice of Default expires on May 4, 2017. Applicant's delay was not willful and was not due to gross neglect, thus good cause exists for setting aside default.

Further, Applicant contends that the Plaintiff will not be prejudiced by setting aside default as this proceeding is still in its early stages. Additionally, Applicant believes that it has a meritorious defense to the Notice of Opposition and desires the opportunity to present that defense so that the Board may decide this case on its merits. Accordingly, good cause exists and Applicant respectfully requests that the Board set aside default and accept Applicant's answer filed contemporaneously with this Motion.

Date: May 2, 2017

Respectfully submitted,

By: /Mike Lin/

Mike Lin

900 East 1st St. #110

Los Angeles, CA 90012

1-415-533-1748

Representing pro se

CERTIFICATE OF SERVICE

This is to certify that a copy of this Motion to Set Aside Notice of Default for Good Cause, has been served on **Disney Enterprises, Inc** by forwarding said copy on May 2, 2017 via email to: Linda.McLeod@kelly-ip.com, DisneyOpp@kelly-ip.com, lit-docketing@kelly-ip.com.

Signature /Mike Lin/

Date: May 2, 2017