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Filing date: **06/27/2017**

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

Proceeding	91234368
Party	Defendant Vodafone Group Plc
Correspondence Address	MARK TIDMAN BAKER & HOSTETLER 1050 CONNECTICUT AVENUE, N.W. SUITE 1100 WASHINGTON, DC 20036 Email: bhipdocket@bakerlaw.com
Submission	Response to Board Order/Inquiry
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Signature	/Mark H. Tidman/
Date	06/27/2017
Attachments	Applicants response to notice of default and Exhibit A.pdf(34136 bytes)

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

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Red.com, Inc.)	
)	
Opposer,)	Opposition No.: 91234368
)	
v.)	Application No.: 86899073
)	
Vodafone Group PLC)	Mark: VODAFONE RED
)	
Applicant.)	
)	
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**APPLICANT’S RESPONSE TO NOTICE OF DEFAULT AND REQUEST FOR
EXTENSION OF TIME TO FILE ANSWER**

Pursuant to Federal Rule of Civil Procedure 55(c), Applicant hereby responds to the Notice of Default issued in this proceeding on June 23, 2017 and respectfully requests that the Notice of Default be set aside and that an extension of time to file Applicant’s Answer be granted. A copy of Applicant’s Answer showing a meritorious defense to Opposer’s claims is attached hereto as Exhibit A.

Applicant’s delay in filing its Answer was not the result of willful conduct or gross neglect, but rather an unintentional docketing error on the part of the office of Applicant’s attorney by which the Notice of Opposition was routed internally and did not come to the responsible attorney’s attention. As a result of this docketing error, Applicant was not made aware of this proceeding until after the deadline to file an Answer. Applicant submits that these unintentional circumstances surrounding the docketing of the Notice of Opposition demonstrate good cause for setting aside the Notice of Default and granting an extension of time to file Applicant’s Answer.

“Good cause for discharging a default is generally found if (1) the delay in filing is not the result of willful conduct or gross neglect, (2) the delay will not result in substantial prejudice to the opposing party, and (3) the defendant has a meritorious defense.” Delorme Publ'g, 60 U.S.P.Q.2d 1222 (T.T.A.B. Nov. 2, 2000). See also Fred Hayman Beverly Hills Inc., 21 U.S.P.Q.2d 1556 (T.T.A.B. Nov. 7, 1991) (failure to timely file answer “was clearly due to an inadvertence on the part of applicant's counsel and not the result of any willful conduct or gross neglect” where attorney failed to realize answer was not filed before Labor Day holiday); Paolo's Assocs. Ltd. P'ship, 21 U.S.P.Q.2d 1899 (Com'r Pat. & Trademarks Sept. 24, 1990) (Board did not abuse discretion in denying motion for entry of default judgment where docketing error occurred and “it is entirely possible that the approved request would simply be associated with the file for the cancellation proceeding by a clerk in the office of registrant's counsel, without it ever having been reviewed by counsel, who may have relied on his docketing system to provide him with notice of the due date for his client's answer”) (emphasis added). Notably, “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.” T.B.M.P. § 312.02.

Applicant has demonstrated good cause here where its docketing error was unintentional; delay will not result in substantial prejudice to Opposer, particularly where Opposer has not filed a motion for entry of default judgment (see Paolo's Assocs. Ltd. P'ship, 21 U.S.P.Q.2d 1899 (holding that Board could have properly rejected petitioner's claim that costs associated with filing motion for entry of default caused it to incur substantial prejudice)); and Applicant has a meritorious defense to Opposer's claims, as shown in its Answer in Exhibit A.

Applicant apologizes for any inconvenience caused by its attorney's unintentional docketing error, and respectfully requests that this request to set aside the Notice of Default and extend the time to answer the Notice of Opposition be granted.

Respectfully submitted,

Vodafone Group PLC

Dated: June 27, 2017

By: /s/Mark H. Tidman

Mark H. Tidman

Baker Hostetler LLP

Washington Square, Suite 1100

1050 Connecticut Avenue, N.W.

Washington, D.C. 20036-5304

(202) 861-1500 (Telephone)

(202) 861-1783 (Facsimile)

Email: mtidman@bakerlaw.com

Attorney for Applicant

CERTIFICATE OF SERVICE

I hereby certify that on this twenty-seventh day of June, 2017, a true copy of Applicant's Response to Notice of Default was served on Opposer via e-mail and U.S. first-class mail, postage prepaid to:

Gregory K. Nelson
Weeks Nelson
462 Stevens Avenue, Suite 310
Solana Beach, CA 92075
nelson@weeksnelson.com
office@weeksnelson.com

/s/ Mark. H. Tidman
Mark H. Tidman

EXHIBIT A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Red.com, Inc.)	
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Opposer,)	Opposition No.: 91234368
)	
v.)	Application No.: 86899073
)	
Vodafone Group PLC)	Mark: VODAFONE RED
)	
Applicant.)	
)	

APPLICANT’S ANSWER TO NOTICE OF OPPOSITION

Vodafone Group PLC (“Applicant”) files its Answer to Red.com, Inc.’s (“Opposer”)

Notice of Opposition and states:

1. Applicant is without knowledge or information sufficient to admit or deny allegations contained in paragraph 1 of the Notice of Opposition and therefore denies the same.
2. Applicant is without knowledge or information sufficient to admit or deny allegations contained in paragraph 2 of the Notice of Opposition and therefore denies the same.
3. Applicant is without knowledge or information sufficient to admit or deny allegations contained in paragraph 3 of the Notice of Opposition and therefore denies the same.
4. Applicant is without knowledge or information sufficient to admit or deny allegations contained in paragraph 4 of the Notice of Opposition and therefore denies the same.
5. Applicant denies that all of the applications referenced in Paragraph 5 of the Notice of Opposition were filed in the USPTO prior to Applicant’s filing date and date of first use. On the contrary, Opposer’s Application Ser. Nos. 86944386 (filed March 17, 2016), 87043971 (filed May 19, 2016), and 87043984 (filed May 19, 2016) were filed after

Applicant filed Application Ser. No. 86899073 (filed February 5, 2016). Applicant is without knowledge or information sufficient to admit or deny the remainder of the allegations contained in paragraph 5 of the Notice of Opposition and therefore denies the same.

6. Applicant is without knowledge or information sufficient to admit or deny allegations contained in paragraph 6 of the Notice of Opposition and therefore denies the same.
7. Applicant is without knowledge or information sufficient to admit or deny allegations contained in paragraph 7 of the Notice of Opposition and therefore denies the same.
8. Applicant admits that it filed U.S. App. Ser. No. 86899073 on February 5, 2016. Except as so admitted, denied.
9. Denied.

AFFIRMATIVE DEFENSES

Opposer's claims are barred by bad faith, fraud, mistake, unclean hands, laches, estoppel, and acquiescence. Opposer's claims are barred in that its Application Ser. Nos. 87043971 (filed May 19, 2016) and 87043984 (filed May 19, 2016) were both filed after Applicant's Application Ser. No. 86899073 (filed February 5, 2016) and were filed as 1(b) applications with no first date of use predating Applicant's filing.

Respectfully submitted,

Vodafone Group PLC

Dated: June 27, 2017

By: /s/ Mark H. Tidman

Mark H. Tidman

Baker Hostetler LLP

Washington Square, Suite 1100

1050 Connecticut Avenue, N.W.

Washington, D.C. 20036-5304

(202) 861-1500 (Telephone)

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Email: mtidman@bakerlaw.com
Attorney for Applicant

CERTIFICATE OF SERVICE

I hereby certify that on this twenty-seventh day of June, 2017, a true copy of Applicant's Answer to Notice of Opposition was served on Opposer via e-mail and U.S. first-class mail, postage prepaid to:

Gregory K. Nelson
Weeks Nelson
462 Stevens Avenue, Suite 310
Solana Beach, CA 92075
nelson@weeksnelson.com
office@weeksnelson.com

/s/ Mark. H. Tidman
Mark H. Tidman