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

Proceeding	91234432
Party	Defendant W.B. Mason Co., Inc.
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Date	06/28/2017
Attachments	Answer to Order Shazam.pdf(92674 bytes )

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

Opposition No. 91234432

Shazam Entertainment Limited

v.

W.B. Mason Co., Inc.

**RESPONSE TO NOTICE OF DEFAULT**

Applicant, W.B. Mason (“Applicant”), responds herein to the Notice of Default issued on June 27, 2017. For the reasons set forth below, Applicant submits that default judgment should not be entered and requests that its concurrently filed Answer to the Notice of Opposition be given proper consideration.

As set forth in TBMP §312.02, an Applicant who has failed to file a timely answer to a Notice of Opposition can respond to a Notice of Default by filing a satisfactory showing of goods cause why default judgment should not be entered against it. Good cause why default judgment should not be entered against the Applicant, for failure to file a timely answer to a Notice of Opposition, is usually found when the Applicant shows that (1) the delay in filing an 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

In the instant matter, Applicant’s delay failure to timely file an Answer to the Notice of Opposition was not the result of willful conduct or gross neglect on the part of Applicant. Rather, Applicant submits that its counsel of record mistakenly overlooked filing a stipulated

request for an extension of time to answer based upon the parties' settlement discussions. Counsel for Opposer suggested the same in an email to Applicant's counsel on June 12, 2017. The failure to file an Answer was therefore not the result of Applicant's willful conduct or gross neglect.

Applicant further submits that the Opposer in the matter will not be substantially prejudiced by the delay in Applicant's filing of an Answer. An answer in the matter would have originally been due on June 17, 2017. As Applicant has submitted herewith its Answer to the Notice of Opposition and Opposer had already offered to consent to an extension of that deadline, Applicant submits that the delay of just 11 days will not cause substantial prejudice to the Opposer.

Finally, Applicant submits that it has meritorious defenses to the action. Specifically, Applicant's applications herein opposed comprise the mark "Shazam Coffee" for *coffee*. None of Opposer's alleged marks identify coffee, any type of food product, or any products tangentially related to food products. Opposer's claim of "fame" and dilution are not likely to succeed due to the volume of third party use and the high hurdle for Opposer to establish the fame of its alleged mark.

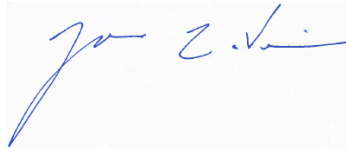
Based upon the foregoing, Applicant submits that default judgment should not be entered. As stated in the TBMP §312.02, the determination of whether judgment should be entered against an Applicant lies within the sound discretion of the Board and, in exercising that discretion, the Board should be mindful of the fact that it is the policy of the law to decide cases on their merits. The established precedent of the Board further establishes that any doubt concerning such matters should be resolved in the favor of the Applicant. *See* TBMP §312.02 and cases cited therein.

For the reasons set forth above, Applicant submits that default judgment should not be entered against it. Applicant therefore requests that the discovery and trial dates for this matter be reset and that consideration be given to Applicant's Answer, which has been filed concurrently.

Respectfully submitted,

June 28, 2017

By:



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Opposition No. 91234432

Shazam Entertainment Limited

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W.B. Mason Co., Inc.

**Certificate of Service**

Opposer certifies that a copy of this pleading has been served by email on counsel of record for Opposer, as follows:

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