

ESTTA Tracking number: **ESTTA921207**

Filing date: **09/10/2018**

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

Proceeding	91242460
Party	Defendant CB SPIRITS S.Ã# R.L
Correspondence Address	STEPHEN L. BAKER BAKER AND RANNELLS PA 92 EAST MAIN STREET SUITE 302 SOMERVILLE, NJ 08876 officeactions@br-tmlaw.com, s.baker@br-tmlaw.com, k.hnasko@br-tmlaw.com, s.cesaro@br-tmlaw.com no phone number provided
Submission	Motion for Relief from entry of Default Judgment
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Date	09/10/2018
Attachments	Response to Notice of Default2.pdf(81986 bytes) Answer 9-10-18.pdf(83324 bytes)

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

In re United States Appl. Ser. 87687183
Mark: NUEVO REBELDE

Luxco, Inc.,)
)
)
 Opposer,)
)
v.)
)
)
CB Spirits S.A.R.L.,)
)
)
 Applicant)

Opposition No. 91242460

**APPLICANT'S RESPONSE TO TTAB NOTICE OF DEFAULT AND ORDER TO
SHOW CAUSE WHY JUDGMENT BY DEFAULT SHOULD NOT BE ENTERED**

Applicant, CB Spirits S.A.R.L., (“Applicant”), by and through its attorneys Baker and Rannells, PA, hereby responds to the Board's Notice of Default and Order to Show Cause and requests that this Honorable Board permit the late filing of Applicant's Answer to the Notice of Opposition in the captioned proceeding. Applicant's proposed Answer and Affirmative Defenses are attached hereto for consideration by the Board.

Pursuant to the Notice of Institution in the proceeding, Applicant's deadline to file an Answer to the captioned Notice of Opposition was August 27, 2018.

Upon receipt of the Notice of Institution, Applicant determined to answer and defend the application in issue. The case was inadvertently calendared out to September 27, 2018. The mistake was discovered on September 6, 2018, when the undersigned was tasked with preparing an Answer. An Answer and Affirmative Defenses was immediately prepared and forwarded to Opposer's counsel with a request for Opposer's consent to the late filing (i.e., 10 days) of the Answer.

Later that day (9/6/18), the Board issued the present Notice of Default and Order to Show Cause. Today, September 10, 2018, Opposer's attorney advised that Opposer would not consent.

Applicant responds to the Order to Show Cause, as follows: The late filing is a result of the inadvertence of Applicant's counsel (i.e., the mis-calendarings addressed above) and not the result of willful conduct or gross neglect on the part of defendant.

The failure to timely file an Answer to a Notice of Opposition is governed by the "good cause" standard of Fed. R. Civ. P. 55(c). *See, Fred Hayman Beverly Hills Inc. v. Jacques Bernier Inc.*, 21 USPQ2d 1556 (TTAB 1991). "Good cause is usually found to have been established if the delay in the filing is not the result of willful conduct or gross neglect on the part of the defendant." *Id.*, at 1557.

The marks in issue in the captioned proceeding are:

Applicant: NUEVO REBELDE for "distilled spirits; liquor; distilled blue agave liquor." Applicant's mark passed to publication without any Section 2(d) citation to Opposer's or any other third-party marks.

Opposer: REBEL YELL; BAND OF REBELS; REBEL RESERVE; 4 REBELS; AMERICA'S REBEL SPIRIT; REBELLION; REBELLION RUM; and CRAFTED IN THE SPIRIT OF REBELLION, all for various spirits in Class 33.

As set forth in Applicant's Answer, Applicant denies that there is a likelihood of confusion. Further, and as set forth in Applicant's Affirmative Defenses, the marks "rebel" and "rebellion" are highly diluted in the United States as used on and/or registered for alcoholic beverages.

Applicant submits an Answer (attached hereto) which is clearly not frivolous, and Applicant has shown, through said Answer and Affirmative Defenses that it has a meritorious defense.

A thirteen-day delay in filing its Answer, will cause little or no prejudice to Opposer.

Accordingly, for good cause shown, Applicant prays that its Answer submitted herewith be accepted and made of record.

Respectfully submitted,
Baker and Rannells PA

/John M. Rannells/

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing RESPONSE TO ORDER TO SHOW CAUSE has been served on Opposer via email this 10th day of September, 2018, to the attorneys for Opposer –

Mike.annis@huschblackwell.com
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Mark: NUEVO REBELDE

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 Applicant)

Opposition No. 91242460

ANSWER TO NOTICE OF OPPOSITION AND AFFIRMATIVE DEFENSES

Applicant, CB Spirits S.A.R.L., (“Applicant”), by and through its attorneys Baker and Rannells, PA, for its Answer to the Notice of Opposition filed by Opposer, Luxco, Inc. (“Opposer”), alleges on knowledge as to its own acts and otherwise upon information and belief as follows:

ANSWER

1. Admitted, with the qualification that the translation of NUEVO REBELDE set forth in the allegations of Paragraph 1 of the Notice of Opposition is just one possible translation of the mark.
2. Applicant has insufficient knowledge or information upon which to form a belief concerning the allegations contained in Paragraph 2 of the Notice of Opposition except that it admits issuance of the Registrations set forth therein.
3. Applicant has insufficient knowledge or information upon which to form a belief concerning the allegations contained in Paragraph 3 of the Notice of Opposition and therefore denies the same.

4. Applicant has insufficient knowledge or information upon which to form a belief concerning the allegations contained in Paragraph 4 of the Notice of Opposition concerning Opposer's alleged common law rights and therefore denies the same.

5. Applicant has insufficient knowledge or information upon which to form a belief concerning the allegations contained in Paragraph 5 of the Notice of Opposition and therefore denies the same.

6. Applicant has insufficient knowledge or information upon which to form a belief concerning the allegations contained in Paragraph 6 of the Notice of Opposition and therefore denies the same.

7. Applicant has insufficient knowledge or information upon which to form a belief concerning the allegations contained in Paragraph 7 of the Notice of Opposition and therefore denies the same.

8. Applicant has insufficient knowledge or information upon which to form a belief concerning the allegations contained in Paragraph 8 of the Notice of Opposition and therefore denies the same.

9. Regarding Paragraph 9 of the Notice of Opposition, Applicant admits filing the application in issue. Applicant denies that Luxco's alleged rights in its "REBEL Marks" are damaged by or affected by the application in issue.

10. Applicant has insufficient knowledge or information upon which to form a belief concerning the allegations contained in Paragraph 10 of the Notice of Opposition and therefore denies the same. Applicant affirmatively asserts that during examination and prosecution of Applicant's application, there was no Section 2(d) refusal of Applicant's mark based upon any third-party mark including any marks owned by Luxco.

11. Applicant denies the allegations contained in Paragraph 11 of the Notice of Opposition.

12. Applicant denies the allegations contained in Paragraph 12 of the Notice of Opposition.

13. Applicant denies the allegations contained in Paragraph 13 of the Notice of Opposition.

14. Applicant denies the allegations contained in Paragraph 14 of the Notice of Opposition.

15. Applicant denies the allegations contained in Paragraph 15 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

1. The marks "rebel" and "rebellion" are used on alcoholic beverages in the United States by numerous third-parties.

2. The marks "rebel and "rebellion" are registered by third-parties for alcoholic beverages in the U.S. Patent and Trademark Office by numerous third-parties.

3. The terms "rebel and "rebellion" are highly diluted as used and/or registered in the United States.

4. As a result of the third-party uses and registrations of "rebel" and "rebellion" marks in the United States, Opposer's marks are weak and diluted.

WHEREFORE, Applicant requests that the Notice of Opposition be denied.

BAKER AND RANNELLS, PA

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing ANSWER TO NOTICE OF OPPOSITION AND AFFIRMATIVE DEFENSES has been served on Opposer via email on September 6, 2018 and again this 10th day of September, 2018, to the attorneys for Opposer –

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