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

Proceeding	91245034
Party	Defendant WeShare IP, LLC
Correspondence Address	JOHN C. STRINGHAM WORKMAN NYDEGGER 60 EAST SOUTH TEMPLE, SUITE 1000 SALT LAKE CITY, UT 84111 jstringham@wnlaw.com, docketing@wnlaw.com no phone number provided
Submission	Motion for Relief from entry of Default Judgment
Filer's Name	Robyn L. Phillips
Filer's email	rphillips@wnlaw.com, jstringham@wnlaw.com
Signature	/Robyn L. Phillips, 39330/
Date	01/31/2019
Attachments	Set Aside Default w EX A - Answer.pdf(166916 bytes) RLP Declaration w EX A.pdf(203109 bytes)

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

In the matter of Trademark Application Serial No. 87/758,734
Published in the Official Gazette: June 5, 2018
Filed: January 17, 2018
Classes: 003, 005, 035, 044
Mark: TAVALA

MAVALA S.A.,)	
)	Opposition No. 91245034
)	
Opposer,)	
)	
v.)	
)	APPLICANT’S MOTION TO SET
WESHARE IP, LLC,)	ASIDE NOTICE OF DEFAULT;
)	[PROPOSED] ANSWER
Applicant.)	
)	
)	

Pursuant to Fed. R. Civ. P. 55(c) and Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) § 312.02, Applicant hereby moves the Trademark Trial and Appeal Board (“TTAB”) to set aside the Notice of Default issued in an Order dated January 18, 2019. Applicant respectfully submits the present Motion, Declaration of Robyn L. Phillips in support of its Motion to Set Aside Default.

I. STATEMENT OF FACTS

Applicant’s application for the mark TAVALA, Serial No. 87/758,734, was published for opposition on June 5, 2018. [Declaration of Robyn L. Phillips in Support of Applicant’s Motion to Set Aside Notice of Default (“Phillips Decl.”), ¶ 3.] On June 14, 2018, Opposer Mavala S.A. (“Opposer”) filed a First 90 Day Request for Extension of time for Good Cause in the present

opposition, which was granted by the TTAB. [Appl. Serial No. 87758734, Dkt. Nos. 1 and 2.] During this time, Opposer and Applicant were also involved in other oppositions (Opp. Nos. 91232974 (parent case) and 91233848), which were consolidated by the TTAB and involved the same marks as the present proceeding. [Phillips Decl., ¶ 4.] The parties have been engaged in ongoing settlement discussions regarding the trademark dispute involving all of the contested marks. [Phillips Decl., ¶ 5.] Subsequently, on October 1, 2018, Opposer filed a Final 60-Day Request to Extend Time to Oppose in the present proceeding with Applicant's consent which was also granted by the TTAB. [Appl. Serial No. 87758734, Dkt. Nos. 3 and 4.]

During this time, the parties continued to discuss potential terms for settlement of the trademark dispute and on November 7, 2018, Applicant sent a draft of a Settlement Agreement memorializing some of the proposed terms. [Phillips Decl., ¶ 6.] Because of the ongoing settlement discussions, on November 26, 2018, Applicant filed a Consent Motion for Suspension for Settlement in the '974 Opposition. [Phillips Decl., ¶ 7; *see also* '974 Opp., Dkt. No. 28.] In the present case, because no further extensions could be filed, Opposer filed a Notice of Opposition on November 29, 2018. [Dkt. No. 1.] The TTAB received the Notice of Opposition and that same day set out an electronic notice to Applicant with a link to the Notice of Opposition and the Scheduling Order. [Dkt. Nos. 1 and 2.]

Applicant's lead counsel received the Notice of Opposition and the Scheduling Order from the TTAB for the present case and it was docketed by the firm docketing department onto his docket. [Phillips Decl., ¶ 8.] However, due to an internal docketing misunderstanding and miscommunication, the undersigned counsel who has been handling the oppositions involving the trademark disputes with Opposer, was not included on the docket for the present case. [Phillips Decl., ¶ 8] As a result of this inadvertent oversight, the due date of January 8, 2019, to file an

Answer in the present opposition was not on the undersigned's docket. [Phillips Decl., ¶ 9 and Exh. A.]

Subsequently, on January 18, 2019, the TTAB issued a Notice of Default in the present opposition giving Applicant thirty (30) days to show cause why judgment by default should not be entered. [Dkt. No. 4.] Upon learning of issuance of the Notice of Default, Applicant immediately investigated this matter and discovered the apparent miscommunication and misunderstanding by internal docketing regarding the staffing of the present opposition and the resulting docketing error. [Phillips Decl., ¶ 10.]

Applicant respectfully submits that good cause exists and respectfully requests that it be allowed to file its Answer to Notice of Opposition which was due on January 8, 2019, a copy of which is attached hereto as Exhibit "A".

II. LEGAL STANDARD

The standard for whether or not default should be set aside is whether Applicant can show "good cause". Fed. R. Civ. P. 55. In the TTAB, the standard for good cause is whether: "(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 substantively prejudiced by the delay, and (3) the [Applicant] has a meritorious defense to the action." TBMP § 312.02. Applicant respectfully submits that in this instance there is good cause.

Applicant missed the due date for filing the Answer in the present case due to an inadvertent miscommunication and misunderstanding which resulted in a docketing error. [Phillips Decl., ¶¶ 8-10.] As such, there was no willful or gross neglect on the part of the Applicant. Rather, while the due date of the Answer was docketed for lead counsel who thought the Answer was being handled by the undersigned, it was not also entered on the undersigned's

docket. [Phillips Decl., ¶ 8-10.] In as much as the parties are negotiating settlement of the entire trademark dispute involving both oppositions, the failure to file the Answer was not willful. [Phillips Decl., ¶ 11.]

The standard for gross negligence is high, as illustrated by the examples cited in TBMP § 312.02. These examples include an instance where an answer was not filed until six months after the due date, but the delay was intentional. *See DeLorme Pub. Co. v. Eartha's Inc.*, 60 U.S.P.Q.2d 1222, 1224 (T.T.A.B. 2000). In this case, the twenty-three (23) day delay by Applicant to file its Answer was unintentional. [Phillips Decl., ¶ 12.] Inadvertence of counsel is a recognized grounds for overturning entry of default. *Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 U.S.P.Q.2d 1556, 1557 (T.T.A.B. 1991) (failure to answer due to inadvertence on the part of Defendant's counsel). In the present opposition, the failure to file was due to an inadvertent docketing error in which the due date was not placed on the attorney's docket who was handling the matter due to a miscommunication and misunderstanding in the docketing department, and on that basis the default should be overturned. [See Phillips Decl., ¶¶ 8-9.]

Applicant respectfully submits that Opposer will not be prejudiced by setting aside the default. The parties are engaged in settlement discussions and have exchanged drafts of the Settlement Agreement. [Phillips Decl., ¶ 11.] Applicant has promptly submitted the present Motion and a [Proposed] Answer upon learning of the default. The present Opposition proceeding is in its initial stages. As such, Opposer should not be able to obtain default due to an unintended mistake in docketing by Applicant.

As shown by the attached [Proposed] Answer, Applicant has a meritorious defense to the Notice of Opposition. In most cases, filing an answer is considered satisfactory for showing that

a party has a meritorious defense. *Djeredjian v. Kashi Co.*, 21 U.S.P.Q.2d 1613, 1615 (T.T.A.B. 1991). “[T]he showing of a meritorious defense does not require an evaluation of the merits of the case. All that is required is a plausible response to the allegations in the complaint.” *DeLorme*, 60 U.S.P.Q.2d at 1224. As noted above, Applicant’s [Proposed] Answer is attached hereto, and is being submitted concurrently with the Motion as directed in the Trademark Rules. See TBMP § 312.01.

It is the policy of the law for cases to be decided on their merits. See TBMP § 312.01. As a result, it is well established that Fed. R. Civ. P. 55 is to be liberally construed in order to provide relief from the onerous consequences of defaults and with any doubt being resolved in favor of setting aside the default. See *In re Hammer*, 940 F.2d 524, 525 (9th Cir. 1991), *Tolson v. Hodge*, 411 F.2d 123, 130 (4th Cir. 1969); *Barber v. Turberville*, 218 F.2d 34, 36 (D.C. Cir. 1954).

Indeed, the Trademark Rules states:

The determination of whether default judgment should be entered against a party lies within the sound discretion of the Board. In exercising that discretion, the Board must be mindful of the fact that it is the policy of the law to decide cases on their merits. Accordingly, 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.

TBMP § 312.02.

Accordingly, Applicant requests that the TTAB liberally construe the standard in light of the circumstances in this case, and grant Applicant’s Motion, so the opposition may be litigated on its merits, as is preferred under the law and the rules of the TTAB.

III. CONCLUSION

For the reasons discussed above, Applicant respectfully submits that its Motion to Set Aside should be granted, the default set aside, and Applicant's [Proposed] Answer, attached hereto and filed concurrently herewith be accepted.

DATED this 31st day of January, 2019.

Respectfully submitted,

/Robyn L. Phillips/

John C. Stringham, Reg. No. 40,831

Robyn L. Phillips, Reg. No. 39,330

WORKMAN NYDEGGER

60 East South Temple, Suite 1000

Salt Lake City, Utah 84111

Telephone: (801) 533-9800

Facsimile: (801) 328-1707

jstringham@wnlaw.com

rphillips@wnlaw.com

ATTORNEYS FOR APPLICANT

WESHARE IP, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **APPLICANT WESHARE IP, LLC'S MOTION TO SET ASIDE DEFAULT; [PROPOSED] ANSWER** has been sent and served on this the 31st day of January, 2019, via email to the following counsel of record for Opposer:

Mark Lebow
LADAS & PARRY LLP
1700 Diagonal Road, Suite 505
Alexandria, VA 22314
mlebow@ladas.com

/Robyn L. Phillips/

Robyn L. Phillips

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EXHIBIT A

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

In the matter of Trademark Application Serial No. 87/758,734
Published in the Official Gazette: June 5, 2018
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Classes: 003, 005, 035, 044
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MAVALA S.A.,)	
)	Opposition No. 91245034
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Opposer,)	
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v.)	
)	ANSWER TO NOTICE OF
WESHARE IP, LLC,)	OPPOSITION
)	
Applicant.)	
)	
)	

APPLICANT, WESHARE IP, LLC'S, ANSWER
TO NOTICE OF OPPOSITION

In response to the Notice of Opposition filed November 29, 2018, by opposer Mavala S.A. ("Opposer"), Applicant WeShare IP, LLC ("WeShare") hereby responds and answers.

ANSWER

WeShare is without information sufficient to form a basis to admit or deny that Opposer is a corporation organized and existing under the laws of Switzerland, with a place of business at 2, rue Antoine-Jolivet, CH-1227 Carouge, Switzerland, and therefore denies the same.

WeShare admits that it is a Utah limited liability company with an address of 629 E. Quality Dr., Suite 102, American Fork, UT 84003.

WeShare denies Opposer will be damaged by the registration of the mark TAVALA in United States Trademark Application Serial No. 87/758,734 (“the ‘734 Application”) for goods and services in International Classes 003, 035 and 044.

Applicant hereby answers Opposer’s numbered grounds for opposition as follows:

1. WeShare lacks knowledge or information sufficient to form a basis to admit or deny the allegations set forth in paragraph 1 of the Notice of Opposition, and, therefore, denies such allegations.

2. WeShare lacks knowledge or information sufficient to form a basis to admit or deny the allegations set forth in paragraph 2 of the Notice of Opposition, and, therefore, denies such allegations.

3. WeShare lacks knowledge or information sufficient to form a basis to admit or deny the allegations set forth in paragraph 3 of the Notice of Opposition, and, therefore, denies such allegations.

4. WeShare lacks knowledge or information sufficient to form a basis to admit or deny the allegations set forth in paragraph 4 of the Notice of Opposition, and, therefore, denies such allegations.

5. WeShare lacks knowledge or information sufficient to form a basis to admit or deny the allegations set forth in paragraph 5 of the Notice of Opposition, and, therefore, denies such allegations.

6. WeShare lacks knowledge or information sufficient to form a basis to admit or deny the allegations set forth in paragraph 6 of the Notice of Opposition, and, therefore, denies such allegations.

7. WeShare lacks knowledge or information sufficient to form a basis to admit or deny the allegations set forth in paragraph 6 of the Notice of Opposition, and, therefore, denies such allegations.

8. WeShare admits that the TESS database of the United States Patent and Trademark Office ("PTO") identifies Opposer as the owner of United States Trademark Registration No. 718,669 ("the '669 Registration") for the mark MAVALA in typed word, filed on October 1, 1959 and registered on July 18, 1961. WeShare admits that the '669 Registration covers goods in International Class 003 identified as "Products for the Hardening and the Treatment of Fragile, Split, and Soft Nails." WeShare admits that Exhibit A attached to the Answer purports to be the registration certificate of the '669 Registration, pages from the TSDR of the PTO's database for the '669 Registration, and a print off from the PTO database showing the Trademark Assignment Abstract of Title for the '669 Registration. WeShare lacks knowledge or information sufficient to form a basis to admit or deny any and all remaining allegations set forth in paragraph 8 of the Notice of Opposition, and, therefore, denies such allegations.

9. WeShare admits that the TESS database of the (PTO) identifies Opposer as the owner of United States Trademark Registration No. 2,597,004 ("the '004 Registration") for the mark MAVALA in typed word(s)/Letter(s), filed on July 26, 2000 and registered on July 23, 2002. WeShare admits that the '004 Registration covers goods in International Class 003 identified as "Cosmetic and beauty products, namely, nail hardeners and liquid treatments for the

nails; hand and body creams, hand and body lotions, talcum powder, mascaras, blush, face and body powders, skin soap, bath and shower gels and soaps, perfumes, shampoo, hair lotions, dentifrices, and essential oils for personal use,” Class 008 identified as “Nail and cuticle scissors, nippers, clippers, metallic nail files and hair tweezers,” and Class 021 identified as” Hair combs, cosmetic sponges, and cosmetic and hair brushes.” WeShare admits that Exhibit B attached to the Answer purports to be the registration certificate of the ‘004 Registration, pages from the TSDR of the PTO’s database for the ‘004 Registration, and a print off from the PTO database showing the Trademark Assignment Abstract of Title for the ‘004 Registration. WeShare lacks knowledge or information sufficient to form a basis to admit or deny any and all remaining allegations set forth in paragraph 9 of the Notice of Opposition, and, therefore, denies such allegations.

10. WeShare admits that its ‘734 Application seeks registration of the mark “TAVALA” as a standard character mark for goods and services in International Classes 003, 005, 035, and 044. WeShare admits that the ‘734 Application seeks to register the mark “TAVALA” for the goods and services identified as:

Class 003 – “Cosmetics; Cosmetics and cosmetic preparations; Cosmetics and make-up; Cosmetics in general, including perfumes; Make-up; Make-up for the face and body; Make-up foundations; Make-up pencils; Make-up powder; Make-up preparations; Make-up preparations for the face and body; Facial make-up; Foundation make-up; Powder for make-up; Cosmetic skin care preparations, namely, lipstick, eye make-up, blush, rouge, and skin makeup, eye makeup, namely, mascara, eye shadow, eyeliners and eye pencils; lip balm moisturizers; Eyebrow cosmetics; Make-up removing lotions; Make-up removing milks; Make-up removing preparations; Eye make-up remover; Cosmetic preparations for skin care; Cosmetic creams for skin care; Nutritional oils for cosmetic purposes; facial care products, namely, cleansers, lotions, creams, oils, and non-medicated serums; skin moisturizers, skin toners, skin brightening lotions and make-up remover; moisturizing facial mask infused with lotions, creams, and serums; anti-wrinkle cream; lotion, cream, and gel for blemished and damaged skin; personal care preparation; namely, eyelash moisturizer and conditioner; Non-medicated skin care preparations; Non-medicated skin care preparations, namely, creams, lotions, gels, toners, cleaners serums

and peels; Pore tightening mask packs used as cosmetics; Skin care preparations, namely, skin peels; Anti-aging moisturizers used as cosmetics; Wrinkle removing skin care preparations; Body and beauty care cosmetics; Skin care, namely, facial and skin lotions and creams, soaps, bath and shower gels and bubble bath; skin care preparation, namely, cleanser and lotion; skin disinfectant creams; talc-free body powder; essential oils; Scented body lotions and creams; hair preparations, namely, shampoos, conditioners, gels, lotions and hair sprays; Bath lotion; Body lotion; Body art stickers; Anti-bacterial soap; Baby shampoo; Beauty soap; Body cream soap; Deodorant soap; Liquid soap; Skin soap; Skin fresheners; Skin moisturizers used as cosmetics; After-sun gels; After-sun oils; after-sun skin lotion; Foams containing cosmetics and sunscreens; Self-tanning preparations; Tanning gels; Tanning oils; Sun tan lotion; sun blocking preparations; sun tanning preparations; shaving gels, lotions and soaps;”

Class 005 – “Dietary supplements; Dietary supplements for human consumption; Dietary and nutritional supplements; Nutritional supplements; Dietary food supplements; Natural dietary supplements; Dietary supplement drink mixes; Dietary supplemental drinks; Nutritional and dietary supplements formed and packaged as bars; Nutritional supplement energy bars; Nutritional supplement meal replacement bars for boosting energy; Nutritional supplement shakes; Powdered nutritional supplement concentrate; Powdered nutritional supplement drink mix; Powdered fruit-flavored dietary supplement drink mix; Amino acids for nutritional purposes; Dietary and nutritional supplements for endurance sports; Liquid nutritional supplement; Mineral nutritional supplements; Nutraceuticals for use as a dietary supplement; Protein dietary supplements; Dietary supplemental drinks in the nature of vitamin and mineral beverages; Dietary supplements in the nature of weight loss powders; Dietary and nutritional supplements used for weight loss; Dietary beverage supplements for human consumption in liquid and dry mix form for therapeutic purposes; Chocolate-based meal replacement shakes for weight loss purposes; dietary and nutritional supplements in the nature of a strip; dietary and nutritional supplements in the nature of a micromist;”

Class 035 - “Online retail store services featuring nutritional, herbal and dietary supplements, nutritional, herbal and dietary supplement drink mixes, herbal supplement relief strips, herbal supplemental micromist, facial care products, skin care products and hair care products; Distribution services in the field of nutritional, herbal and dietary supplements, nutritional, herbal and dietary supplement drink mixes, herbal supplement relief strips, herbal supplemental micromist, facial care products, skin care products and hair care products; Website specializing in the promotion of cosmetics, facial care products, skin care products, hair care products, dietary, nutritional and herbal supplements for use in retail services through direct solicitation by distributors directed to end-users; Online reselling, distributing, promoting, consulting and publicizing services by online media and networking through direct solicitation by distributors to end-users featuring cosmetics, skin care, hair care, health, dietary, health and nutritional supplements and vitamins; distributor incentive award programs for promotional and advertising purposes;” and

Class 044 – “Advisory information and consultancy services in the field of dietary, beauty and personal care products.’

WeShare denies any and all remaining allegations of paragraph 10 of the Notice of Opposition.

11. We share admits the ‘734 Application was filed after Opposer had filed a Notice of Opposition to WeShare’s Application Nos. 87173142 for the mark “TAVALA” (“the 142 Application) and 87175467 for the stylized mark “TAVALA with design” (“the ‘467 Application”), both covering goods in International Class 003. WeShare denies that the goods covered by the ‘734 Application are “identical” to the goods covered by either the ‘142 Application or the ‘467 Application. WeShare admits that the Opposition Nos. 91232974 (parent) and 91233848 have been consolidated and are currently pending before the Trademark Trial and Appeal Board. WeShare lacks knowledge or information sufficient to form a basis to admit or deny any and all remaining allegations set forth in paragraph 11 of the Notice of Opposition, and, therefore, denies such allegations.

12. WeShare admits that according to the Utah Division of Corporations and Commercial Code business database the entity WeShare IP, LLC was registered on January 6, 2016. WeShare denies any and all remaining allegations of paragraph 12 of the Notice of Opposition.

13. Due to a typographical error in one of the dates in paragraph 13, WeShare is unable to admit or deny paragraph 13 of the Notice of Opposition and therefore, denies such allegations.

14. Admitted.

15. Applicant admits it did not exist prior to January 6, 2016. WeShare lacks knowledge or information sufficient to form a basis to admit or deny any and all remaining allegations set forth in paragraph 15 of the Notice of Opposition, and, therefore, denies such allegations.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

21. Denied.

WeShare denies any and all remaining allegations set forth in the Notice of Opposition. WeShare further denies that Opposer is entitled to any of the relief set forth in the Notice of Opposition.

AFFIRMATIVE DEFENSES

By way of defense to the allegations set forth in the Notice of Opposition, WeShare asserts the following Affirmative Defenses:

FIRST AFFIRMATIVE DEFENSE

Opposer's Notice of Opposition fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Opposer's claims are barred by the doctrine of laches, estoppel, acquiescence, and/or waiver.

THIRD AFFIRMATIVE DEFENSE

Opposer is not likely to be damaged by registration of the '734 Application, and, therefore, lacks standing to oppose the same.

FOURTH AFFIRMATIVE DEFENSE

WeShare's use of its mark will not be mistakenly thought by the public to derive from the same source as Opposer's goods, nor will such use be thought by the public to be a use by Opposer or with Opposer's authorization or approval.

FIFTH AFFIRMATIVE DEFENSE

WeShare's mark, when used in connection with WeShare's goods, is not likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of WeShare with Opposer, or as to the origin, sponsorship, or approval of WeShare's goods by Opposer.

RELIEF REQUESTED

In view of the foregoing, WeShare respectfully requests that the relief requested by Opposer be denied, and that the Notice of Opposition be denied with prejudice.

DATED this 31st day of January, 2019.

Respectfully submitted,

/Robyn L. Phillips/

John C. Stringham, Reg. No. 40,831

Robyn L. Phillips, Reg. No. 39,330

WORKMAN NYDEGGER

60 East South Temple, Suite 1000

Salt Lake City, Utah 84111

Telephone: (801) 533-9800

Facsimile: (801) 328-1707

jstringham@wnlaw.com

rphillips@wnlaw.com

ATTORNEYS FOR APPLICANT
WESHARE IP, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **APPLICANT WESHARE IP, LLC'S ANSWER TO NOTICE OF OPPOSITION** has been sent and served on this the 31st day of January, 2019, via email to the following counsel of record for Opposer:

Mark Lebow
LADAS & PARRY LLP
1700 Diagonal Road, Suite 505
Alexandria, VA 22314
mlebow@ladas.com

/Robyn L. Phillips/
Robyn L. Phillips

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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MAVALA S.A.,)	
)	Opposition No. 91245034
)	
Opposer,)	
)	
v.)	DECLARATION OF ROBYN L.
)	PHILLIPS IN SUPPORT OF
WESHARE IP, LLC,)	APPLICANT'S MOTION TO SET
)	ASIDE DEFAULT
Applicant.)	
)	
)	

I, Robyn L. Phillips, hereby state:

1. I am a shareholder in the firm Workman Nydegger, counsel for the Applicant, WeShare IP, LLC.
2. I make this declaration based on my own personal knowledge and based on the records maintained by Workman Nydegger in the ordinary course of business, to which I have access and upon which I rely in the course of performing my duties for Workman Nydegger and its clients, including WeShare IP, LLC.
3. Applicant's application for the mark TAVALA, Serial No. 87758734, was published for opposition on June 5, 2018.

4. During this time, Opposer and Applicant were also involved in other oppositions (Opp. Nos. 91232974 (parent case) and 91233848), which were consolidated by the TTAB and involved the same marks as the present proceeding.

5. The parties have been engaged in ongoing settlement discussions regarding the trademark dispute involving all of the contested marks.

6. During this time, the parties continued to discuss potential terms for settlement of the trademark dispute and on November 7, 2018, Applicant sent a draft of a Settlement Agreement memorializing some of the proposed terms.

7. Because of the ongoing settlement discussions, on November 26, 2018, Applicant filed a Consent Motion for Suspension for Settlement in the '974 Opposition.

8. Applicant's lead counsel received the Notice of Opposition and the Scheduling Order from the TTAB for the present case and it was docketed by the firm docketing department onto his docket. However, due to an internal docketing misunderstanding and miscommunication, the undersigned counsel who has been handling the oppositions involving the trademark disputes with Opposer, was not included on the docket for the present case.

9. As a result of this oversight, the due date of January 8, 2019, to file an Answer in the present opposition was not on my docket. Attached hereto as Exhibit A is a true and correct copy of my docket dated January 4, 2019, showing the matters on my docket for January 8, 2019, with the other matters redacted and the name of the client redacted for the matter due on January 8, 2018. None of the redacted matters are related to any of the cases involving Opposer or Applicant.

10. Upon learning of issuance of the Notice of Default, Applicant immediately investigated this matter and discovered the apparent miscommunication and misunderstanding by internal docketing regarding the staffing of the present opposition and the resulting docketing error.

11. In as much as the parties are negotiating settlement of the entire trademark dispute involving both oppositions, the failure to file the Answer was not willful. The parties have exchanged drafts of the Settlement Agreement.

12. The delay in filing the Answer was unintentional.

I declare under penalty of perjury under the laws of the United States of America that the statements set forth hereinabove are true and correct to the best of my knowledge and understanding.

DATED this 31st day of January, 2019.

Respectfully submitted,

/Robyn L. Phillips/

John C. Stringham, Reg. No. 40,831

Robyn L. Phillips, Reg. No. 39,330

WORKMAN NYDEGGER

60 East South Temple, Suite 1000

Salt Lake City, Utah 84111

Telephone: (801) 533-9800

Facsimile: (801) 328-1707

jstringham@wnlaw.com

rphillips@wnlaw.com

ATTORNEYS FOR APPLICANT

WESHARE IP, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **DECLARATION OF ROBYN L. PHILLIPS IN SUPPORT OF APPLICANT WESHARE IP, LLC'S MOTION TO SET ASIDE DEFAULT** has been sent and served on this the 31st day of January, 2019, via email to the following counsel of record for Opposer:

Mark Lebow
LADAS & PARRY LLP
1700 Diagonal Road, Suite 505
Alexandria, VA 22314
mlebow@ladas.com

/Robyn L. Phillips/
Robyn L. Phillips

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EXHIBIT A

90-Day Litigation Docket Report

Robyn L. Phillips

Matter	Client Name	Matter Description	Team Members	Notes
1/5/2019				
20646.74	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1/8/2019				
16315.103	[REDACTED]	91235891 [REDACTED] v. [REDACTED] Corporation (SUN&SOL)	Filing Secretary-Shellie Courdy Docketing-Robyn L. Phillips Paralegal-Jennifer H Hunter	L/D for [REDACTED] to file Notice of Appeal with TTAB.
1/9/2019				
21641.1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
21641.1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1/15/2019				
15605.285	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
20646.74	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]