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

Proceeding	91246567
Party	Defendant Phantom I.P., LLC
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Submission	Motion for Relief from entry of Default Judgment
Filer's Name	Robyn R. Gallitto
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Date	05/10/2019
Attachments	2019 05-10 Motion to Set Aside Default.pdf(149601 bytes )

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

DYNAMITE WHOLESale, LLC

Plaintiff,

-against-

PHANTOM I.P., LLC

Defendant

Opposition: # 91246567

**REQUEST TO SET ASIDE NOTICE OF DEFAULT**

NOW COMES, Phantom I.P., LLC ("Defendant") who can show cause in support of Setting Aside the Notice of Default entered April 13, 2019, and in support thereof, offers the following.

**FACTS**

On July 24, 2018, the Defendant applied for the mark "Air Assault." It was reviewed by the U.S. Patent and Trademark Office ("USPTO"). The mark appeared to be entitled to registration and a Notice of Publication occurred on November 20, 2018. Thereafter, on December 18, 2018, Plaintiff filed for an Extension of Time to Oppose. It was granted. A second Request for Extension was filed on January 17, 2019. It was granted and Plaintiff had until March 20, 2019 to file its opposition. However, instead of availing itself to the entire extension period granted, Plaintiff filed its Opposition on February 22, 2019, approximately one month before the extension ran. Within these extension periods, the parties were in active discussions on a possible resolution of the issue. It seems those negotiations suddenly ended.

**ARGUMENT**

Defendant is asking the Board to set aside the notice of default because it believes it can demonstrate good cause as to why default judgment should not be entered against it. As a

showing of good cause, Defendant avers that the delay in filing a response was not the result of willful conduct or gross neglect on the part of the Defendant; that the Plaintiff was not and will not be substantially prejudiced by the delay in filing a response; and Defendant has a meritorious defense to the action. Defendant believes it can meet the threshold set forth in Rule 312.02 and is asking this Board to exercise its discretion in granting the requested relief.

The failure to file a response to Plaintiff's Opposition was not willful but due to inadvertence and an internal docketing error. Defendant avers that the failure to respond was not intentional, but was instead due to a missed deadline and oversight of the file when counsel's long-time Administrative Assistant quit unexpectedly. Defendant had all intentions of defending its position. The Defendant is one division of the Phantom Fireworks companies, a national retailer of consumer fireworks. The Defendant is, in effect, the in-house manager of a portfolio of approximately 500 trademarks, many websites, numerous domain names, and all other intellectual property. The fact that the deadline was missed was strictly and totally an accident, not a purposeful act.

There will be no prejudice to the Plaintiff if Defendant is allowed to file a response on the merits where Defendant can offer a plausible response to the Plaintiff's allegation. All of the Opponent's arguments can be heard on their merits.

Additionally, Defendant does have a meritorious defense. Plaintiff's opposition is based in common law rights. Defendant is attempting to file its mark with the U.S. Patent and Trademark office. There should be a full examination of the rights to which each party is entitled before the case is dismissed.

Lastly, there is a tendency to allow these disputes to be heard on their merits, and not be disposed of due to the technicalities of calendaring.


*WHEREFORE*, the Defendant, Phantom I.P., LLC respectfully requests a finding that Defendant has made a satisfactory showing of good cause such that the Notice of Default entered April 13, 2019 should be set aside since Defendant's failure to timely file a response

was not willful but inadvertent due to a docketing error; there will be no prejudice; and because Defendant does indeed have a meritorious defense, and the parties were involved in active negotiations toward a comprehensive resolution, and let this case be decided on its merits.

Respectfully submitted,

Phantom I.P., LLC

Date: May 10, 2019


By:   
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**Certificate of Service**

On the 10<sup>th</sup> day of May, 2019 the undersigned hereby certifies that a true and complete copy of Defendant's Request to Set Aside Notice of Default has been served on Glenn K. Robbins, attorney for Plaintiff, by forwarding the same to Glenn K. Robbins, Attorney for Plaintiff, via email address of grobbins@spencerfane.com.

Respectfully submitted,

Phantom I.P., LLC

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