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

Proceeding	91256367
Party	Defendant Trex Commercial Products, Inc.
Correspondence Address	LOIS B. DUQUETTE MCNEES WALLACE & NURICK LLC 100 PINE STREET HARRISBURG, PA 17101 UNITED STATES Primary Email: trademarks@mcneeslaw.com No phone number provided.
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Signature	/Olivia Levine/
Date	09/02/2020
Attachments	A7665311.pdf(15477 bytes )

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

In re:

Mark: CRESCENDO  
Serial No.: 88700253  
Filed: November 20, 2019

Masonite Corporation,	:	
Opposer	:	
	:	
v.	:	Opposition No. 91256367
	:	
Trex Commercial Products, Inc.,	:	
Applicant.	:	

**RESPONSE TO NOTICE OF DEFAULT**

Applicant, Trex Commercial Products, Inc., through its attorneys McNees Wallace & Nurick LLC, files this Response to the Notice of Default dated September 2, 2020 to show good cause as to why a judgment by default should not be entered in this opposition action. Opposer consented to this motion via email on September 1, 2020. In support of this motion, Applicant states as follows:

1. Applicant is a party to two separate oppositions regarding Application No. 88700253, this Opposition No. 91256367 (the “Opposition”) and Opposition No. 91256362.
2. Opposer, Masonite Corporation, is a subsidiary of the opposer in Opposition No. 91256362, Masonite International Corporation.
3. Opposer’s counsel is also counsel to the opposer in Opposition No. 91256362.

4. Applicant's counsel was in communication with Opposer's counsel regarding settlement of Opposition No. 91256362 and Opposition No. 91256367. Opposer consented to Applicant filing motions to extend time to file the answers in both oppositions.

5. Applicant filed and the Board approved a consented to motion to extend time to answer in Opposition No. 91256362 on the grounds that Applicant and Opposer are involved in settlement negotiations.

6. As a result of human error, when Applicant filed the consented to motion to extend time in Opposition No. 91256362 to file its answer, it failed to file an extension of time to answer this Opposition.

7. Because Applicant and Opposer are engaged in settlement negotiations, Applicant is not filing an Answer with this Response to the Notice of Default.

8. The delay in filing an Answer was not the result of willful conduct or gross negligence on behalf of Applicant.

9. Opposer will not be substantially prejudiced by the delay in filing an Answer because i) Opposer and Applicant are engaged in settlement negotiations regarding both Oppositions Nos. 91256362 and 91256367, and ii) Oppositions Nos. 91256362 and 91256367 are substantively identical except that in one opposition the parent corporation is the opposer and in the other opposition the subsidiary corporation is the opposer.

10. Applicant has a meritorious defense to the Opposition that the Applicant's mark when used on the goods as applied for in Application No. 88700253 will not create a likelihood of confusion with Opposer's parent company's mark as registered in Registration No. 5050065.

Therefore, for the reasons set forth above, Applicant has good cause for why a default judgment should not be entered against it. It is the policy of the law to decide cases on their



**CERTIFICATE OF SERVICE**

I hereby certify that on this date, a true and correct copy of the foregoing document sent by electronic mail to Opposer's attorney of record Joseph Berenato at [jberenato@bw-iplaw.com](mailto:jberenato@bw-iplaw.com).

Date: September 2, 2020

By:           /s/Olivia Levine            
Olivia Levine