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

Proceeding no.	91279885
Party	Defendant BLUEOCO, LLC
Correspondence address	BLUEOCO, LLC 2950 PRAIRIE AVE SW 1000 GRANDVILLE, MI 49418 UNITED STATES Primary email: lindsey@blueoco.com Secondary email(s): tmapp@legalzoom.com 616-366-5220
Submission	Motion for Relief from entry of Default Judgment
Filer's name	Jovan N. Jovanovic
Filer's email	docketing@Watson-ip.com, JJovanovic@Watson-ip.com
Signature	/s Jovan N. Jovanovic/
Date	12/05/2022
Attachments	DefaultToNOTBLU221601.pdf(161118 bytes) AnswerToNOTBLU221601.pdf(98471 bytes)

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

HACHETTE FILIPACCHI PRESSE,

Opposition No. 91279885

Opposers,

Serial No.: 90758310

v.

Mark: ELLE & KATE

BLUEOCO, LLC,

Applicant.

MOTION TO SET ASIDE DEFAULT

NOW COMES Applicant Blueoco, LLC. (“Applicant”), by and through its attorneys, hereby submits its motion to Set Aside Default pursuant to TBMP Section 312.02 and with good cause shown, respectfully requests that the Board set aside the Notice of Default and accept the Answer in this matter.

In support thereof Applicant submits:

STATEMENT OF THE CASE

1. On or about September 26, 2022, Opposer instituted the proceeding against the registration of Applicant’s trademark application Serial No. 90758310.
2. Applicant’s deadline to file its answer was November 5, 2022.
3. Applicant, due to errors with email addresses with the filing of the application did not receive the Opposition Notice.
4. It was only upon a separate search that it was uncovered that the Opposition had been filed. By the time it was uncovered, the Notice of Default had been entered.

5. The Board issued the Notice of Default at issue herein.

DISCUSSION

Applicant submits that good cause as to why default judgment should not be entered against a defendant for failure to file a timely file an answer is usually found when the defendant can demonstrate that (1) the delay in filing was not the result of willful conduct or gross neglect on the part of the defendant, (2) the plaintiff will not be substantially prejudiced by the delay, and (3) the defendant has a meritorious defense to the action. TBMP § 312.02.

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 timely, and tends to resolve any doubt on the matter in favor of the defendant. TBMP § 312.02.

In the instant case Applicant submits that due to email issues and identification, Applicant did not receive the Notice of Opposition. Thus, Applicant was not aware of the Notice until *after* the Notice of Default had issued. As such, it is submitted that good cause be established in this matter as to why the default should be set aside on the basis of Applicant's non-receipt and, subsequent lapse in not having the response filed in a timely manner, and not prior to the Notice of Default. Applicant is in the process of amending the email addresses and the representation for the underlying trademark application as well.

It is respectfully submitted that the instant oversight was not as a result of willful conduct or gross neglect on the part of the Applicant but rather due to the non receipt of the same. Moreover, it is submitted that the Opposer would not be prejudiced whatsoever by the instant

setting aside of the default at issue as the simple delay at issue is not sufficient to warrant a finding of prejudice in this regard.

In regard to a meritorious defense, for the purposes of completeness the Applicant has attached its Answer setting forth its defense in the instant matter which it moves the Board to accept as late given the good cause shown herein.

WHEREFORE for good cause considered, the Applicant respectfully requests that the Board accept the attached Answer and Grounds of Defense in this matter.

Dated: December 3, 2022

THE WATSON IP GROUP, PLC

/s Jovan N. Jovanovic/
Jovan N. Jovanovic (Reg. No. 40039)
3133 Highland Drive, Suite 200
Hudsonville, Michigan 49426
Tel: (616) 797-1000
Fax: (866) 369-7391
jjovanovic@watson-ip.com

Attorneys for Applicant

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Applicant.

ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS
OF BLUEOCO, LLC

Applicant Blueoco, LLC. (“Applicant”), by and through its attorneys, hereby answers the Notice of Opposition (the “Opposition”) filed by Hachette Filipacchi Presse, (“Opposers”) as follows. To the extent not explicitly admitted, all allegations in the opposition are denied.

ANSWER

1. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1, and, on that basis, denies the same.
2. Applicant denies the allegations of Paragraph 2.
3. Applicant denies the allegations of Paragraph 3.
4. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4, and, on that basis, denies the same.
5. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5, and, on that basis, denies the same.

6. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6, and, on that basis, denies the same.

7. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7, and, on that basis, denies the same.

8. Applicant denies the allegations of Paragraph 8.

9. Applicant denies the allegations of Paragraph 9.

10. Applicant submits that the decision speaks for itself, and admits Paragraph 10 only to the extent that the TTAB in opposition 91174433 made such statement. Applicant denies the remaining allegations of Paragraph 10.

11. Applicant denies the allegations of Paragraph 11.

12. Applicant denies the allegations of Paragraph 12.

13. Applicant admits only that the registrations cited in Paragraph 13 speak for themselves. Applicant denies the remaining allegations of Paragraph 13.

14. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14, and, on that basis, denies the same.

15. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15, and, on that basis, denies the same.

16. Applicant admits that on June 7, 2021, Applicant filed Applicant's mark, for the goods identified in the application. Applicant denies the remaining allegations of Paragraph 16.

17. Applicant denies the allegations of Paragraph 17.

18. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18, and, on that basis, denies the same.

19. Applicant denies the allegations of Paragraph 19.

20. Applicant realleges its Answers to Paragraphs 1 through 19.
21. Applicant denies the allegations of Paragraph 21.
22. Applicant denies the allegations of Paragraph 22.
23. Applicant denies the allegations of Paragraph 23.
24. Applicant denies the allegations of Paragraph 24.
25. Applicant denies the allegations of Paragraph 25.
26. Applicant realleges its Answers to Paragraphs 1 through 19.
27. Applicant denies the allegations of Paragraph 27.
28. Applicant denies the allegations of Paragraph 28.
29. Applicant denies the allegations of Paragraph 29.

WHEREFORE, Applicant requests that the notice of opposition be dismissed with prejudice, together with whatever other relief the Board may deem appropriate.

Dated: December 3, 2022

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Jovan N. Jovanovic (Reg. No. 40039)
3133 Highland Drive, Suite 200
Hudsonville, Michigan 49426
Tel: (616) 797-1000
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jjovanovic@watson-ip.com

Attorneys for Applicant