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

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|------------------------|--|
| Proceeding no. | 91288244 |
| Party | Defendant World Wrestling Entertainment, Inc. |
| Correspondence address | LAUREN A. DIENES-MIDDLEN WORLD WRESTLING ENTERTAINMENT, INC. 1241 EAST MAIN STREET STAMFORD, CT 06902 UNITED STATES Primary email: lauren.middlen@wwecorp.com 203-353-2827 |
| Submission | Opposition/Response to Motion |
| Filer's name | Laura K. Pitts |
| Filer's email | laura.pitts@bipc.com, mark.kornfeld@bipc.com, soenya.randolph@bipc.com, lauren.middlen@wwecorp.com |
| Signature | /Laura K. Pitts/ |
| Date | 01/08/2024 |
| Attachments | Big Time Becks - FINAL- Jan 8 - Response to Motion for Default.pdf(169575 bytes) Big Time Becks - FINAL - Exhibit A.pdf(103156 bytes) |

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

| | | |
|--------------------------------------|---|-------------------------|
| James K. Duck, |) | |
| |) | |
| Opposer, |) | |
| |) | |
| v. |) | |
| |) | Opposition No. 91288244 |
| World Wrestling Entertainment, Inc., |) | |
| |) | |
| Applicant. |) | |
| |) | |
| |) | |
| |) | |

APPLICANT’S RESPONSE TO OPPOSER’S MOTION FOR DEULT JUDGMENT

I. INTRODUCTION

Applicant World Wrestling Entertainment, LLC, formerly known as World Wrestling Entertainment, Inc. ("Applicant" or "WWE"),¹ hereby submits this opposition to Opposer James K. Duck’s (“Opposer” or “Duck”) January 3, 2024 Motion for Default (the “Motion”) in the above-identified action.

Applicant respectfully submits that there is good cause for setting aside the requested default and allowing this action to proceed on its merits. Applicant’s failure to file an Answer to the Opposition for Cancellation was inadvertent and was the result of a good faith docketing error, which fell on Christmas Day when counsel’s offices were closed. In addition, Opposer will not be substantially prejudiced by the delay, as the Answer is being filed within 10 business days after the initial deadline and no previous extensions have been granted in this proceeding. Finally, as set forth in the attached Answer (Exhibit A), Applicant has a meritorious defense to the Notice of Opposition.

Therefore, Applicant requests that the Board set aside the request for Notice of Default, accept the attached Answer, and resume proceedings.

¹ Proof of Applicant’s change of name is being submitted separately as part of a request to update the title of the Board proceeding.

II. THE STANDARD FOR SETTING ASIDE A NOTICE OF DEFAULT

The standard for setting aside a Notice of Default is “good cause.” Good cause is generally found if i) the delay in filing is not the result of willful conduct or gross neglect; ii) the delay will not result in substantial prejudice to the opposing party; and iii) the defendant has a meritorious defense. TBMP §312.02; *DeLorme Publ’g Co. v. Eartha’s, Inc.*, 60 USPQ2d 1222, 1224 (TTAB 2000). In analyzing these factors, the Board keeps in mind that the law strongly favors determination of cases on their merits. *Id.* (citing *CTRL Systems Nc. V. Ultraphonics of North America Inc.*, 52 USPQ2d 1300, 1301 (TTAB 1999). “[T]he 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; *see also Paolo’s Associates Limited Partnership v. Paolo Bodo*, 21 USPQ2d 1899 (Comm’r 1990).

III. THE DELAY WAS NOT THE RESULT OF WILLFUL CONDUCT OR GROSS NEGLIGENCE BY APPLICANT

In this case, all three of the relevant factors favor a finding of good cause for setting aside the Notice of Default. First, Applicant’s delay in filing the Answer was not the result of willful conduct or gross neglect, but rather was the result of an inadvertent docketing error. Although Applicant’s counsel believed that this proceeding had been properly docketed, counsel did not receive notice of the pending deadline to respond to the pleadings due to inadvertent error in entering the proceeding into the firm’s docketing system. Moreover, the deadline to answer the Opposition fell on a holiday, December 25, 2023, when the offices were closed. Applicant became aware of the missed deadline only when the present Motion was filed.

Applicant’s failure to timely file its Answer was inadvertent and it has moved quickly to resolve this issue as soon it was discovered. Its actions were not willful and certainly do not rise to the level of “gross” neglect that would justify the harsh penalty of entering judgment against Applicant without giving it an opportunity to contest the case on the merits. Moreover, granting Applicant’s request is consistent with the Board’s liberal approach to setting aside default due to inadvertent error. *See, e.g.*, TBMP § 312.02; *Paolo’s Associates Limited Partnership*, 21 USPQ2d at 1903-04 (upholding Board’s

decision setting aside default following inadvertent 20-day delay in answering due to docketing error); *Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556, 1557 (TTAB 1991) (setting aside default as a result of 9-day delay in failure to answer due to inadvertence on part of applicant's counsel); *see also DrDisabilityQuotes.com, LLC v. Krugh*, 2021 USPQ2d 262, at *2 (TTAB 2021) (setting aside notice of default where delay was not the result of willful conduct or gross neglect on part of respondent); *L'Oreal S.A. and L'Oreal USA, Inc., v. Robert Victor Marcon*, 102 USPQ2d 1434, 1435 n.1 (TTAB 2012) (setting aside default due to inadvertence); *PLM Operations, LLC v. Productos Lacteos Tocumbo S.A. de C.V.*, 2019 BL 481430 (TTAB Nov. 14, 2019) [non-precedential] (setting aside default for short delay due to carelessness that was not the result of willful conduct or gross neglect).

IV. OPPOSER WILL NOT BE PREJUDICED BY THE DELAY

In addition, Opposer will not be prejudiced by Applicant's minimal delay in filing its Answer. Applicant is submitting its proposed Answer along with this response. The Answer was originally due on December 25th, so the delay in filing the Answer is less than 10 business days in total. Moreover, Applicant has moved expeditiously to file this response as soon as possible after the present Motion was filed. Applicant further notes that this proceeding is in its infancy and there have been no prior extensions granted in this case. This minimal delay will not cause any prejudice to Opposer, and again does not justify the harsh remedy of entering judgment without reaching the merits of the case. *See Fred Hayman Beverly Hills Inc.*, 21 USPQ2d at 1557 (“[T]he nine day delay in the filing of the answer will cause minimal prejudice to opposer.”).

V. APPLICANT HAS A MERITORIOUS DEFENSE

Finally, Applicant has a meritorious defense to the Notice of Opposition, as demonstrated through the proposed Answer submitted herewith as Exhibit A. “The 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.” TBMP § 312.01. This element is clearly satisfied.

VI. CONCLUSION

For the reasons set forth above, Applicant respectfully requests that the Board set aside the Notice of Default, accept the proposed Answer attached as Exhibit A, and issue an order resuming proceedings.

Respectfully submitted,

World Wrestling Entertainment, LLC

By /Laura K. Pitts/

Laura K. Pitts

Mark A. Kornfeld

Buchanan Ingersoll & Rooney, PC

1737 King Street

Alexandria, VA 22314-2727

Telephone: 703/836-6620

Facsimile: 703/836-2021

Attorneys for Applicant

Date: January 8, 2024

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing APPLICANT'S RESPONSE TO OPPOSER'S MOTION FOR DEAULT was served this 8th day of January, 2024 via email to:

Mr. James K. Duck
Trademark Owner
1307 S. 7TH STREET
DEKALB, IL 60115
wcpwowner@gmail.com

/Laura K. Pitts/
Laura K. Pitts

EXHIBIT A

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

James K. Duck,

Opposer,

v.

World Wrestling Entertainment, Inc.,

Applicant.

Opposition No. 91288244

ANSWER TO NOTICE OF OPPOSITION

Applicant World Wrestling Entertainment, LLC, formerly known as World Wrestling Entertainment, Inc. (“Applicant” or “WWE”), hereby responds to the allegations in Opposer James K. Duck’s (“Opposer” or “Duck”) Notice of Opposition. In response to the factual allegations in Opposer’s unnumbered paragraphs, Applicant lacks sufficient information to form a belief as to the allegations, and therefore denies the same. These paragraphs also contain legal conclusions to which a response is not required. To the extent a response is required, the allegations are denied.

1. Applicant lacks sufficient information to form a belief as to the allegations in this Paragraph, and therefore denies the same.

2. Applicant lacks sufficient information to form a belief as to the allegations in this Paragraph, and therefore denies the same.

3. Applicant lacks sufficient information to form a belief as to the allegations in this Paragraph, and therefore denies the same.

4. Applicant lacks sufficient information to form a belief as to the allegations in this Paragraph, and therefore denies the same.

5. Applicant lacks sufficient information to form a belief as to the allegations in this Paragraph, and therefore denies the same.

6. Applicant lacks sufficient information to form a belief as to the allegations in this Paragraph, and therefore denies the same. This Paragraph also contains legal conclusions to which a response is not required. To the extent a response is required, the allegations are denied.

7. Applicant lacks sufficient information to form a belief as to the allegations in this Paragraph, and therefore denies the same. This Paragraph also contains legal conclusions to which a response is not required. To the extent a response is required, the allegations are denied.

8. Applicant lacks sufficient information to form a belief as to the allegations in this Paragraph, and therefore denies the same. This Paragraph also contains legal conclusions to which a response is not required. To the extent a response is required, the allegations are denied.

9. Applicant admits that 1241 East Main Street, Stamford CONNECTICUT 06902 was Applicant's address at the time that the Big Time Becks Application was filed, but its current business address is 707 Washington Blvd., Stamford, CT 06901. Similarly, Applicant admits that Applicant was a Delaware corporation at the time Big Time Becks Application was filed. However, Applicant converted from World Wrestling Entertainment, Inc., a Delaware corporation, to World Wrestling Entertainment, LLC, a Delaware limited liability company, on September 12, 2023.

10. Applicant denies that the Big Time Becks Application was filed under Trademark Act Section 1(a). The remainder of this Paragraph is admitted.

11. Admitted.

12. Admitted.

13. Applicant lacks sufficient information to form a belief as to the allegations in this Paragraph, and therefore denies the same.

14. Applicant lacks sufficient information to form a belief as to the allegations in this Paragraph, and therefore denies the same.

15. Applicant lacks sufficient information to form a belief as to the allegations in this Paragraph, and therefore denies the same. This Paragraph also contains legal conclusions to which a response is not required. To the extent a response is required, the allegations are denied.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

20. Applicant admits that the mark in Applicant's Big Time Becks Application consists of standard characters and does not claim any particular font style, size, or color. Applicant lacks sufficient information to form a belief as to the remaining allegations in this Paragraph, and therefore denies the same. This Paragraph also contains legal conclusions to which a response is not required. To the extent a response is required, the allegations are denied.

21. Applicant lacks sufficient information to form a belief as to the allegations in this Paragraph, and therefore denies the same. This Paragraph also contains legal conclusions to which a response is not required. To the extent a response is required, the allegations are denied.

22. Applicant lacks sufficient information to form a belief as to the allegations in this Paragraph, and therefore denies the same. This Paragraph also contains legal conclusions to which a response is not required. To the extent a response is required, the allegations are denied.

23. Applicant lacks sufficient information to form a belief as to the allegations in this Paragraph, and therefore denies the same. This Paragraph also contains legal conclusions to which a response is not required. To the extent a response is required, the allegations are denied.

24. Applicant lacks sufficient information to form a belief as to the allegations in this Paragraph, and therefore denies the same. This Paragraph also contains legal conclusions to which a response is not required. To the extent a response is required, the allegations are denied.

25. Applicant lacks sufficient information to form a belief as to the allegations in this Paragraph, and therefore denies the same. This Paragraph also contains legal conclusions to which a response is not required. To the extent a response is required, the allegations are denied.

26. Applicant lacks sufficient information to form a belief as to the allegations in this Paragraph, and therefore denies the same. This Paragraph also contains legal conclusions to which a response is not required. To the extent a response is required, the allegations are denied.

27. This Paragraph consists of legal conclusions to which a response is not required. To the extent a response is required, the allegations are denied.

28. This Paragraph consists of legal conclusions to which a response is not required. To the extent a response is required, the allegations are denied.

WHEREFORE, Applicant requests that the Opposition be denied; that Application Serial No. 97/024,008 be allowed to register; and for such further relief as may be proper.

Respectfully submitted,

World Wrestling Entertainment, LLC

By: /Laura K. Pitts/
Laura K. Pitts
Mark A. Kornfeld
Attorneys for Applicant
Buchanan Ingersoll & Rooney PC
1737 King Street, Suite 500
Alexandria, Virginia 22314-2727
Telephone: 703-836-6620

Date: January 8, 2024

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing ANSWER TO NOTICE OF OPPOSITION was served this 8th day of January, 2024 via email to:

Mr. James K. Duck
Trademark Owner
1307 S. 7TH STREET
DEKALB, IL 60115
wcpwowner@gmail.com

/Laura K. Pitts/
Laura K. Pitts