

ESTTA Tracking number: **ESTTA1353631**
Filing date: **04/19/2024**

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

Proceeding no.	91289331
Party	Defendant James Lindsay
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Submission	Motion for Relief from entry of Default Judgment
Filer's name	William A. Wooten
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Signature	/William A. Wooten/
Date	04/19/2024
Attachments	RACKS-Motion-to-Set-Aside-Default.pdf(87293 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board

Serial No. 97660324;

For the mark RACKS

NIHC, INC.

Opposer,

vs.

JAMES LINDSAY,

Applicant.

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Opposition No. 91289331

MOTION TO SET ASIDE DEFAULT

COMES NOW the Applicant, James Lindsay (hereinafter “Applicant”), and submits the instant Motion to Set Aside Default pursuant to TBMP § 312.02 and with good cause shown respectfully requests that the Board set aside the Notice of Default and accept the Motion to Dismiss and related Memorandum in this matter. In support thereof, Applicant states as follows:

STATEMENT OF THE CASE

1. On or about January 22, 2024 NIHC, Inc. (“Opposer”) instituted the instant proceeding against the registration of Applicant’s trademark.
2. Applicant’s deadline to file its Answer and Grounds of Defense was March 2, 2018.
3. Applicant inadvertently failed to timely file a Motion for an Extension requesting an extension or an Answer and Grounds of Defense while Applicant pursued alternative resolution with Opposer in this matter.
4. The Board subsequently issued the Notice of Default at issue herein.

RESPONSE

Good cause why default judgment should not be entered against a defendant, for failure to file a timely answer, is usually found when the defendant shows 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 case at hand, Applicant's counsel inadvertently lost track of the deadline to file a response or a motion for an extension in the matter and was not aware that the same had passed until the default notice. 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 counsel's inadvertent lapse in not having the response filed in a timely manner.

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 a minor calendaring error. 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. Furthermore, such default would be a grave injustice to Applicant's rights considering the minor delay and lack of prejudice.

In regard to a meritorious defense for the purposes of completeness, the Applicant has attached its Motion to Dismiss and Memorandum of Law setting forth its defenses in this matter.

The Applicant moves the Board to accept its position 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.

This 19th day of April, 2024.

Respectfully submitted,
s/William A. Wooten
William A. Wooten, Esq.
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Attorneys for Applicant

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board**

NIHC, INC.	:	
	:	
Opposer,	:	
	:	
vs.	:	Opposition No. 91289331
	:	
JAMES LINDSAY,	:	
	:	
Applicant.	:	

CERTIFICATE OF SERVICE

In accordance with Trademark Rule 2.119, I certify that a copy of this Motion was served on the following on April 19th, 2024, via email at the email address indicated below and via posting through ESTTA:

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Respectfully submitted,

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