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

Proceeding no.	91291943
Party	Defendant Banas, Thomas
Correspondence address	MARK BORGHESE 10161 PARK RUN DRIVE, SUITE 150 LAS VEGAS, NV 89145 UNITED STATES Primary email: mark@borgheselegal.com Secondary email(s): docket@borgheselegal.com 702-382-0200
Submission	Other Motions/Submissions
Filer's name	Mark Borghese
Filer's email	mark@borgheselegal.com
Signature	/MB/
Date	08/08/2024
Attachments	2024-08-08-Response to Notice of Default.pdf(107205 bytes)

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

BLACK KNIGHT SPORTS AND, ENTERTAINMENT LLC Opposer, vs. THOMAS BANAS, Applicant.	)	**Opposition No. 91291943** U.S. Application Serial No.: 98085602 Mark: HAVE A KNIGHTS DAY!

RESPONSE TO NOTICE OF DEFAULT

Applicant, Thomas Banas ("Applicant"), responds to the Notice of Default issued on July 28, 2024 [4 TTABVUE]. For the reasons set forth below, Applicant submits that default judgment should not be entered and requests that the concurrently filed Answer to Notice of Opposition be given proper consideration.

As set forth in TBMP §312.02, an Applicant who has failed to file a timely answer to a Notice of Opposition can respond to a Notice of Default by filing a satisfactory showing of good cause why default judgment should not be entered against it. Good cause why default judgment should not be entered against the Applicant, for failure to file a timely answer to a Notice of Opposition, is usually found when the Applicant shows that (1) the delay in filing an answer was not the result of willful conduct or gross neglect on the part of the Applicant, (2) the Opposer will not be substantially prejudiced by the delay, and (3) the Applicant has a meritorious defense to the action. TBMP §312.02

In the instant matter, Applicant's delay failure to timely file an Answer to the Notice of Opposition was not the result of willful conduct or gross neglect on the part of Applicant. Rather,

Applicant the failure to timely respond to the Notice of Opposition was due to a clerical error, namely that the due date was not entered properly into the docket of Applicant's counsel. The error was recognized when counsel received the Notice of Default. The failure to file an Answer was therefore not the result of Applicant's willful conduct or gross neglect.

Applicant further submits that the Opposer in the matter will not be substantially prejudiced by the delay in Applicant's filing of an Answer. An answer in the matter would have originally been due on July 17, 2024. As Applicant has submitted herewith its Answer to Notice of Opposition, Applicant submits that the delay of less than one month will not cause substantial prejudice to Opposer.

Finally, Applicant submits that he has meritorious defenses to the action. Specifically, the Opposer's marks at issue in the proceeding are its "VEGAS GOLDEN KNIGHTS" mark and its "KNIGHT UP" mark for clothing in Class 25 and various other "knight" marks for entertainment services in Class 41. Applicant's mark, by contrast is for "HAVE A KNIGHTS DAY!" for clothing which is a play on the common phrase "have a nice day" which is not likely be confused with either of Opposer's marks for clothing or any of Opposer's entertainment marks.

Although Opposer claims to have rights to the "Golden Knights" for hockey, the Las Vegas hockey team is hardly the only use of the common word "knight." As one of many examples unrelated to hockey, there are roughly 200 Renaissance fairs and festivals held across the United States each year, where Applicant may promote its Have a Knights Day! clothing brand. These festivals include the annual *Age of Chivalry* Renaissance Festival which has been held in Las Vegas for more than 25 years with tens of thousands of attendees (the most recent Age of Chivalry in Las Vegas in 2023 had more than 50,000 attendees).

Applicant submits that he has meritorious defenses to Opposer's allegations of likelihood of confusion based upon the differences between the marks and, in the case of Opposer's marks in

Class 41, the differences between Applicant's goods and Opposer's services. Based upon the foregoing, Applicant submits that a default judgment should not be entered.

As stated in the TBMP §312.02, the determination of whether judgment should be entered against an Applicant lies within the sound discretion of the Board and, in exercising that discretion, the Board should be mindful of the fact that it is the policy of the law to decide cases on their merits. The established precedent of the Board further establishes that any doubt concerning such matters should be resolved in the favor of the Applicant. *See* TBMP §312.02 and cases cited therein.

For the reasons set forth above, Applicant submits that a default judgment should not be entered and requests that the discovery and trial dates for this matter be reset.

Respectfully submitted,

Dated: August 8, 2024

By: */Mark Borghese/*
Mark Borghese, Esq.
Borghese Legal, Ltd.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **RESPONSE TO NOTICE OF DEFAULT** has been served on the attorney of record for Opposer on August 8, 2024 by email to:

Aaron Schroeder, Esq.
NHL Enterprises, L.P.
One Manhattan West, 395 Ninth Avenue
New York, NY 10011

Email: aschroeder@nhl.com, tprochnow@nhl.com, jwang@nhl.com, anunez@nhl.com, tboodhram@nhl.com, gbueti@nhl.com, lmcevoy@nhl.com

/Mark Borghese/
Mark Borghese