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Filing date: **07/18/2025**

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

Proceeding no.	91299258
Party	Defendant Buffalo Roam Outfitters, LLC
Correspondence address	SAMUEL F. MILLER STITES & HARIBSON PLLC 401 COMMERCE STREET SUITE 800 NASHVILLE, TN 37219 UNITED STATES Primary email: smiller@stites.com 615-782-2200
Submission	Motion for Relief from entry of Default Judgment
Filer's name	Trevor T. Graves
Filer's email	tgraves@stites.com, smiller@stites.com, mhargis@stites.com
Signature	/Trevor T. Graves/
Date	07/18/2025
Attachments	Motion to Set Aside.PDF(312273 bytes) Exhibit 1.PDF(279174 bytes) Exhibit 2.PDF(570326 bytes)

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

In the Matter of Registration Application Serial No. 97976388
For the mark: BUFFALO ROAM OUTFITTERS
Filed: September 12, 2022
Published in the *Official Gazette* on January 28, 2025

BUFFALO BOOTS GMBH,	:	
	:	
Opposer,	:	
v.	:	OPPOSITION No. 91299258
	:	
BUFFALO ROAM OUTFITTERS, LLC,	:	
	:	
Applicant.	:	

MOTION TO SET ASIDE DEFAULT AND FOR ACCEPTANCE AND ENTRY OF ANSWER

Applicant Buffalo Roam Outfitters, LLC (“Applicant”), by and through its undersigned counsel, and with good cause shown, respectfully requests that the Board set aside the default judgment and accept and enter the attached Answer in this matter. In support thereof Applicant states as follows:

STATEMENT OF THE CASE

1. On May 28, 2025, Opposer Buffalo Boots GmbH (“Opposer”) filed its Notice of Opposition.
2. On May 29, 2025, Applicant’s counsel filed a Notice of Appearance in this proceeding.
3. Applicant’s deadline to file its Answer was July 7, 2025.
4. Although Applicant’s counsel prepared an Answer on or about June 24, 2025, to be filed on or before July 7, 2025, there was a miscommunication between Applicant’s co-counsel that resulted in the Answer inadvertently and unintentionally not being filed on the due date. *See*

Declaration of Trevor Graves attached hereto as Exhibit 1.

5. The Board subsequently issued the issued the Notice of Default on July 18, 2025.
6. This Motion is filed on July 18, 2025.
7. Applicant's proposed Answer is attached hereto as Exhibit 2.

RESPONSE

Pursuant to Fed. R. Civ. P. 55(c), a default may be set aside "for good cause shown." As a general rule, good cause to set aside an applicant's default will be found to have been established "if the delay in filing is not the result of willful conduct or gross neglect on the part of the [applicant], if the delay will not result in substantial prejudice to the plaintiff, and if the [applicant] has a meritorious defense." *Fred Hayman Beverly Hills Inc. v. Jacques Bernier Inc.*, 21 U.S.P.Q.2d 1556 (T.T.A.B. 1991); TBMP 312.02. In the present case, all factors weigh in favor of setting aside the default and accepting and entering of the attached Answer.

First, Applicant's delay in filing the Answer was not willful or in bad faith. As shown by the attached Declaration of Trevor Graves, co-counsel for Applicant, Mr. Graves prepared an Answer to the Notice of Opposition on or about June 24, 2025. However, due to a miscommunication amount co-counsel for the Applicant, the Answer was inadvertently and unintentionally not filed on July 7, 2025. There was no strategic or other reason for not filing the Answer. It has always been Applicant's position that it would contest the Notice of Opposition as evidenced by the filing of the Notice of Appearance by co-counsel in this matter. Furthermore, Applicant is currently defending an earlier filed opposition proceeding involving the same application (as well as two other applications) filed by a different opposer (Opposition No. 91294685).

The oversight was not as a result of willful conduct or gross neglect on the part of the

Applicant. The inadvertence here is similar to the attorney who missed the response deadline in *Fred Hayman Beverly Hills, Inc.*, where the attorney mistakenly and inadvertently failed to file the Answer prior to leaving for vacation. 21 USPQ2d at 1557 (failure to answer due to inadvertence on part of applicant's counsel; answer had been prepared and reviewed by applicant but counsel inadvertently failed to file it; nine-day delay would cause minimal prejudice; by submission of answer which was not frivolous meritorious defense was shown).

Second, Applicant's delay in filing the answer will not result in substantial prejudice to Opposer. Opposer did not incur any time or expense filing a motion for default. Instead, the Board entered default on its own accord on July 18, 2025. Applicant filed the present Motion and its proposed Answer on July 18, 2025, the same day as the default judgment entered. There is no co-pending litigation between the parties. There is no prejudice whatsoever to Opposer by entering the Answer eleven days late. Indeed, a simple delay is insufficient to warrant a finding of prejudice. *See, e.g., Fred Hayman Beverly Hills*, 21 USPQ2d at 1557 (nine-day delay in filing motion and submitting answer did not constitute prejudice); *Regatta Sport, Ltd. v. Telux-Pioneer, Inc.*, 20 USPQ2d 1154, 1156 (TTAB 1991) (delay alone is not a sufficient basis for establishing prejudice); *Paolo's Associates L.P. v. Bodo*, 21 USPQ2d 1899, 1903-04 (Comm'r 1990) (no evidence that failure was willful; costs incurred in preparing and filing motion not sufficient to support finding of prejudice).

The third factor requires consideration of whether the defaulting party has a meritorious defense. "By the submission of an answer which is not frivolous, applicant has adequately shown that it has a meritorious defense." *Fred Hayman Beverly Hills*, 21 USPQ2d at 1557. To determine whether a party has a meritorious defense, the defaulting party need not establish that there is a likelihood that it "will carry the day, but whether the evidence submitted, if proven at trial, would

constitute a complete defense.” *Enron Oil Corp. v. Diakuhara*, 10 F.3d 90, 98 (2d Cir. 1993). Here, as shown on the face of the attached Answer, Applicant has meritorious defenses including, but not limited to, (1) due to widespread third party use and registration of marks containing the term BUFFALO and/or buffalo profile designs on identical and/or highly similar goods, Opposer’s marks are conceptually weak and entitled to a narrow scope of protection, and (2) Opposer cannot establish a likelihood of confusion between its marks and Applicant’s mark.

WHEREFORE, having shown good cause, Applicant respectfully requests the Board set aside the default judgment and accept and enter the attached Answer in this matter.

Respectfully submitted,

/Trevor. T. Graves/

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COUNSEL FOR APPLICANT
BUFFALO ROAM OUTFITTERS, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this the 18th day of July 2025, a true and correct copy of the foregoing Answer was served on Opposer via electronic mail to:

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Counsel for Opposer

/Trevor T. Graves/
COUNSEL FOR APPLICANT
BUFFALO ROAM OUTFITTERS, LLC

10318942:v2

EXHIBIT 1

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

In the Matter of Registration Application Serial No. 97976388
For the mark: BUFFALO ROAM OUTFITTERS
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BUFFALO BOOTS GMBH,	:	
	:	
Opposer,	:	
v.	:	OPPOSITION NO. 91299258
	:	
BUFFALO ROAM OUTFITTERS, LLC,	:	
	:	
Applicant.	:	

DECLARATION OF TREVOR T. GRAVES

I, Trevor T. Graves, submit this Declaration in support of Applicant Buffalo Roam Outfitters, LLC's ("Applicant's") Motion to Set Aside Default and for Acceptance and Entry of Answer (the "Motion"). I aver under penalty of perjury that the following statements are made of the my own knowledge and are true and correct to the best of my knowledge, information, and belief. I further aver that I have been warned that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. § 1001) and may jeopardize the validity of the application at issue.

1. I am above the age of eighteen and am competent to testify as to the matters herein if called to do so. I am co-counsel for Applicant in this matter.
2. On or about June 24, 2025, I personally drafted and prepared an Answer to the Notice that is attached to the Motion as Exhibit 2.
3. On the draft of the Answer, I dated the certificate of service as July 7, 2025, which the intent that the Answer would be filed on that date.
4. Due to a miscommunication as to who was to file the Answer on July 7, 2025, the

Answer was inadvertently and unintentionally not filed on July 7, 2025. The failure to file was not that of Applicant.

5. There was no strategic or other reason for not filing the Answer. It has always been Applicant's position that it would contest the Notice of Opposition. This is evidenced by Applicant's current defense of the same mark in a co-pending opposition proceeding with another entity (Opposition No. 91294685).

Respectfully submitted,

/Trevor T. Graves/
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tgraves@stites.com

COUNSEL FOR APPLICANT
BUFFALO ROAM OUTFITTERS, LLC

EXHIBIT 2

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

In the Matter of Registration Application Serial No. 97976388
For the mark: BUFFALO ROAM OUTFITTERS
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Opposer,	:	
v.	:	OPPOSITION NO. 91299258
	:	
BUFFALO ROAM OUTFITTERS, LLC,	:	
	:	
Applicant.	:	

**ANSWER AND AFFIRMATIVE DEFENSES TO
NOTICE OF OPPOSITION**

Applicant Buffalo Roam Outfitters, LLC (“Applicant”), by and through its undersigned counsel, for its Answer to Opposer Buffalo Boots GmbH’s (“Opposer”) Notice of Opposition (the “Notice”) states as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Notice and, therefore, denies same.
2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Notice and, therefore, denies same.
3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Notice and, therefore, denies same.
4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Notice and, therefore, denies same.
5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Notice and, therefore, denies same.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Notice and, therefore, denies same.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Notice and, therefore, denies same.

8. Applicant admits the allegations contained in paragraph 8 of the Notice.

9. Applicant denies the allegations contained in paragraph 9 of the Notice.

10. Applicant denies the allegations contained in paragraph 10 of the Notice.

11. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Notice and, therefore, denies same.

12. Applicant denies the allegations contained in paragraph 12 of the Notice.

13. Applicant denies the allegations contained in paragraph 13 of the Notice.

14. Applicant denies the allegations contained in paragraph 14 of the Notice.

15. Applicant denies the allegations contained in paragraph 15 of the Notice.

16. Applicant denies the allegations contained in paragraph 16 of the Notice.

17. Applicant denies the allegations contained in paragraph 17 of the Notice.

18. Unless expressly admitted herein, Applicant denies any allegations contained in the Notice.

FIRST DEFENSE

Opposer's Notice of Opposition fails to state a claim upon which relief may be granted.

SECOND DEFENSE

Due to widespread third party use and registration of marks containing the term BUFFALO and/or buffalo profile designs on identical and/or highly similar goods, Opposer's marks are conceptually weak and entitled to a narrow scope of protection.

THIRD DEFENSE

Opposer cannot establish a likelihood of confusion between its marks and Applicant's mark.

FOURTH DEFENSE

Applicant reserves the right to raise additional defenses to the extent new information arises during the course of discovery in this matter.

WHEREFORE, Applicant respectfully prays that Opposer's Notice of Opposition be dismissed and that registration of Applicant's mark be issued.

Respectfully submitted,

/Trevor. T. Graves/
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COUNSEL FOR APPLICANT
BUFFALO ROAM OUTFITTERS, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this the 18th day of July 2025, a true and correct copy of the foregoing Answer was served on Opposer via electronic mail to:

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Counsel for Opposer

/Trevor T. Graves/_____
COUNSEL FOR APPLICANT
BUFFALO ROAM OUTFITTERS, LLC

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