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Filing date:	**12/02/2025**

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

Proceeding no.	91301636
Party	Plaintiff Cosmetic Warriors Limited
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Signature	/Ian McFarland/
Date	12/02/2025
Attachments	2025 12 02 Opposition to Motion to Set Aside Default.pdf(161795 bytes)

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

Cosmetic Warriors Limited,	)	
	)	Opposition No. 91301636
Opposer,	)	
	)	Serial No.: 99/014,882
v.	)	
	)	Mark: LUSHLOOMS
Manoj Mishra,	)	
	)	Application Date: January 22, 2025
	)	
Applicant.	)	Publication Date: August 12, 2025
	)	

OPPOSER'S RESPONSE IN OPPOSITION TO REGISTRANT'S MOTION TO SET ASIDE NOTICE OF DEFAULT

Opposer Cosmetic Warriors Limited ("Opposer" or "CWL") hereby responds to Applicant's Motion to Set Aside Notice of Default (4 TTABVUE, the "Motion"). Applicant's Motion should be denied because the sole justification for neglecting to timely respond amounts to only conclusory assertions of unfamiliarity with TTAB procedure. Under the Board's "good cause" standard, Applicant has not carried the requisite burden. The Board should maintain the default and enter judgment accordingly.

BACKGROUND

1. On January 22, 2025, Applicant filed its application for the mark LUSHLOOMS in international class 16 for decals and stickers used for home decor.

2. On September 11, 2025, Opposer initiated this proceeding through timely filing its Notice of Opposition. (1 TTABVUE.)

3. As articulated in the Notice of Opposition, Opposer owns registrations and common law rights in the mark LUSH across cosmetics, retail store services, home décor goods, apparel, and related offerings, with overlapping channels of trade including brick-and-mortar, Internet, and

social media.

4. The same day, the Board instituted this opposition with a standard trial order expressly directing Applicant to file an answer within sixty days and warning that failure to answer could result in default and abandonment of the application. (2 TTABVUE.) The order clearly prescribed an answer due date of November 10, 2025.

5. Applicant did not file an answer by the deadline and did not move to extend. On November 12, 2025, the Board entered a Notice of Default under Rule 55(a), suspended proceedings, and allowed thirty days for Applicant to show cause why default judgment should not be entered. (4 TTABVUE.)

6. Later that same day, Applicant filed a motion to set aside default and a proposed answer. (5 TTABVUE.) For cause, the Motion chiefly asserts an unfamiliarity with TTAB procedures and a misunderstanding about needing to answer through ESTTA.

LEGAL STANDARD

In deciding a motion to set aside a notice of default under Fed. R. Civ. P. 55(c), the Board employs a "good cause" standard codified in TMBP § 312.02. "Good cause why default judgment should not be entered against a defendant, for failure to file a timely answer to the complaint, is usually found when the defendant shows that (1) the delay in filing an answer 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." *Id.* Applicant has filed to make the requisite showing under at least the first two factors.

ARGUMENT

A. The missed deadline was within Applicant's control and was the result of gross neglect.

Applicant's explanation does not show that the missed deadline was outside its reasonable control or that culpable inattention was absent. The Board's Notice of Institution was clear in

designating a specific answer deadline, mandating an ESTTA filing, and issued repeated instructions about compliance and the consequences of default. Applicant is domiciled in the United States and is not relieved of compliance by appearing pro se. The only proffered reason—unfamiliarity and misunderstanding about ESTTA—is conclusory and contradicts the explicit instructions in the institution order. The Board has repeatedly held that a party's mistaken beliefs or docketing issues do not excuse missing deadlines where the reason for delay was within the party's control. *See*, *e.g.*, *Giersch v. Scripps Networks Inc.*, 85 USPQ2d 1306, 1307-08 (TTAB 2007) (respondent's mistaken belief about extension did not relieve duty to adhere to appropriate deadlines); *Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Manufacturing Co.*, 55 USPQ2d 1848, 1851 (TTAB 2000) (docketing errors and misreading of rule are circumstances wholly within party's control); TBMP § 509.01(b) (collecting cases).

Applicant's filing does not demonstrate diligent efforts, any technical impediment, or communications with the Board or CWL that might justify missing the deadline. There is no particularized account of the steps taken in trying to comply with the deadline. The claimed excuse also raises more questions than it answers. For instance, Applicant claims no attempt at filing an answer through any means other than ESTTA prior to the notice of default. If Applicant's unfamiliarity with the ESTTA system was the real reason for missing the answer deadline, then Applicant's diligence should have included attempting other filing methods. The claimed excuse also underscores that Applicant could have complied, because it filed its Motion and Answer—via ESTTA—the very same day the default notice issued.

Moreover, Applicant did not request an extension at any time before default despite having sixty days' notice and a plainly stated due date. Board precedent requires more than promptness after default. The reason for the delay matters, and here it was entirely within Applicant's control

to calendar the answer due date and file it as instructed. The Board's rules are explicit that parties must strictly comply whether or not they retain counsel. Unfamiliarity or inadvertence is not a substitute for diligence. In these circumstances, Applicant's omission reflects culpable neglect of a clear procedural requirement rather than an excusable or unavoidable failure.

B. Setting aside the notice of default would prejudice Opposer and burden the Board's docket administration.

Prejudice in the Rule 55(c) context focuses on more than simple delay, but the Board has recognized that default and its aftermath disrupt orderly case management, require needless motion practice, and can impinge on scheduling for discovery conferences and pretrial disclosures. Here, the Board's default order automatically suspended the proceeding and tolled deadlines. Resetting the schedule would force CWL to absorb additional administrative burden, cost, and strategic uncertainty after having already complied with all deadlines and invested resources in pleading a robust record of rights.

CONCLUSION

Applicant has not demonstrated good cause to set aside default. For at least the foregoing reasons, the Board should deny the Motion and enter default judgment against Applicant.

Respectfully submitted,

COSMETIC WARRIORS LIMITED,

By its attorneys,

Date: December 2, 2025

/s/ Ian McFarland

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that a true copy of the foregoing **OPPOSER'S RESPONSE IN OPPOSITION TO REGISTRANT'S MOTION TO SET ASIDE NOTICE OF DEFAULT** was filed electronically with the Trademark Trial and Appeal Board and served via email on this 2nd day of December 2025 to Applicant:

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s/Abigail Krueger
Abigail Krueger