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Filing date: **06/24/2004**

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

Proceeding	92041579
Party	Defendant Day, Roy A. Day, Roy A. P.O. Box 33 Tarpon Springs, FL 346880033
Correspondence Address	Day, Roy A. P.O. Box 33 Tarpon Springs, FL 34688
Submission	MOTION TO VACATE THE MAY 25, 2004 NOTICE OF DEFAULT
Filer's Name	ROY A. DAY
Filer's e-mail	royaday@hotmail.com
Signature	/ROY A. DAY/
Date	06/24/2004
Attachments	CLK-VACT.pdf (13 pages)

Roy A. Day
P.O. Box 33
Tarpon Springs, Florida
USA 34688-0033

June 8, 2004

June 17, 2004 – RESENT A SECOND TIME SINCE THE CLERK'S OFFICE ONCE AGAIN DID
NOT TIMELY FILE THE INSTANT MOTION TO VACATE

Ms. Cheryl S. Goodman – Law Office 102
ATTN: TRADEMARK TRIAL and APPEAL BOARD – 9TH FLOOR
United States Patent and Trademark Office
2900 Crystal Drive
Arlington, Virginia 22202-3513

RE: Cancellation Number: 92041579
RE: REAL PROPERTY DEPOT
RE: REG. NO.: 1,942,344
RE: SERIAL NO.: 74566276

RE: SECOND MAILING – FIRST MAILING WAS NOT TIMELY FILED IN THE CLERK'S OFFICE

Dear Ms. Goodman:

CAVEAT: IF AN AGENT AND SERVANT OF MS. CHERYL GOODMAN IS READING THE
INSTANT LETTER, YOU ARE TO CEASE AND DESIST READING THE INSTANT LETTER AND
GIVE TO MS. CHERYL GOODMAN, AND MS. CHERYL GOODMAN ONLY. THANK YOU.

Enclosed please find Defendant's Motion To Vacate The May 25, 2004 Notice Of Default
Entered By A Latricia Harrison Under Federal Rules of Civil Procedure No. 55(a), in the above-
entitled and numbered action. Kindly upon your filing of this pleading, affix your file stamp to
the letter indicating date and time of filing and return to the undersigned in the self-addressed
and stamped envelope.

**Due to facts and circumstances that have developed in the above-entitled and
numbered actions, I NEED YOU (MS. CHERYL GOODMAN ONLY) TO SEND AN EMAIL, AND
A FAX, AND TELEPHONE ME, THAT YOU (MS. CHERYL GOODMAN) HAVE RECEIVED THE
ENCLOSED DOCUMENTS SENT VIA FEDERAL EXPRESS.** There is no other remedy available

Ms. Cheryl Goodman

June 8, 2004

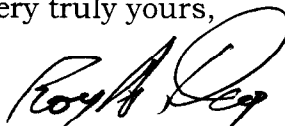
June 17, 2004 – Resent a Second Time

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due to circumstances and facts that has been demonstrated by the personnel in the Patent and Trademark Office in the past, and as associated with the REAL PROPERTY DEPOT extended-registration and Federal Express delivery (Reference: Ms. Janis Long's honest, ethical, and law abiding conduct to remedy the problem in the past).

Thank you for your cooperation and assistance in this matter.

Very truly yours,



Roy A. Day

VOICE: 727-6428636

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EMAIL ADDRESS - and MSN MOBILE and Pocket PC address: royaday@hotmail.com

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RAD/rr

Enclosure

Sent United States First Class Mail – First Sending on June 8, 2004 - will determine if this pleading is acknowledged "timely" received and filed via first class mail – WAS NOT TIMELY FILED.

Sent Federal Express (SECOND SENDING): Airbill Number: 835660248822

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN AND FOR THE TRADEMARK TRIAL AND APPEAL BOARD

THE REALTY DEPOT OF AMERICA, INC.,
Petitioner-Plaintiff

VS.

ROY A. DAY (AKA REAL PROPERTY DEPOT)
Respondent-Defendant

CANCELLATION NUMBER: 92041579:

REAL PROPERTY DEPOT

REG. NO.: 1,942,344

SERIAL NO.: 74566276

I. DEFENDANT'S MOTION TO VACATE THE MAY 25, 2004 NOTICE OF DEFAULT ENTERED BY LATRICIA HARRISON UNDER FEDERAL RULE OF CIVIL PROCEDURE 55(A)

II. DEFENDANT'S MEMORANDUM OF LAW

DEFENDANT, ROY A. DAY, on behalf of the REAL PROPERTY DEPOT (**For the purpose of the instant pleading, and each and all pleadings filed by Defendant in the instant action, the term Defendant Roy A. Day and the REAL PROPERTY DEPOT are SYNONYMOUS**), files this motion, and Defendant would respectfully show unto this Board the following in support thereof (**NOTE: FOR THE PURPOSE OF THE INSTANT PLEADING, AND EACH AND ALL PLEADINGS FILED BY DEFENDANT ROY A. DAY, THE TERM PETITIONER-PLAINTIFF REFERS, RELATES, AND PERTAINS TO AGENTS OR SERVANTS OR CO-CONSPIRATORS OR EMPLOYEES OF THE ENTITY KNOWN AS "The Realty Depot of America" (SERIAL NUMBER: 7594179) (NOTE: THE AFORESAID AGENTS OR SERVANTS OR CO-CONSPIRATORS OR EMPLOYEES WILL BE NAMED IN COUNTER-PLAINTIFF'S COUNTERCLAIM AS COUNTER-DEFENDANTS)**).

1. The instant pleading is being pursuant to DUE ORDER OF PLEADINGS. Accordingly, Defendant repeats and realleges each and all Defendants motions filed at the Trademark Trial and Appeal Board on June 4, 2004, as if the aforesaid Defendant's motions were expressly stated herein. Accordingly, the aforesaid motions should be entertained first, including but not limited to, the F.B.I. investigation issue.

2. This Board has a clear right to vacate the fraudulent notice of default dated May 25, 2004 entered by a Latricia Harrison, since Defendant was willfully, intentionally, wantonly, maliciously, and fraudulently denied each and all pleadings from the Clerk's Office at the Trademark Trial and Appeal Board (except the May 25, 2004 notice of default), as the Trademark Trial and Appeal Board Rules require. Such a course has violated Defendant's Fifth Amendment rights, specifically, due process and equal protection of the law. Further, Plaintiff's opposing counsel willfully, intentionally, wantonly, maliciously, and fraudulently never mailed Defendant each and all pleadings, solely for the purpose to prevent Defendant from timely defending the fraudulent "cancellation-complaint" filed claiming Defendant had abandoned the Real Property Depot entity, when in fact, Defendant has never abandoned the Real Property Depot.

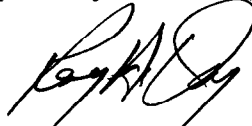
WHEREFORE, PREMISES CONSIDERED, Defendant request that the following relief be granted:

a. That Defendant's Motion To Vacate The May 25, 2004 Notice Of Default Entered By Latria Harrison Under Federal Rules of Civil Procedure 55(a) is GRANTED; that the instant motion will be heard pursuant to due order of pleadings; that the May 25, 2004 notice of default entered by Latricia Harrison is vacated; that Defendant was denied due process and equal protection of the law in direct violation of Defendant's Fifth Amendment rights; that Defendant was denied the right to receive pleadings in the instant cancellation action

under the RULES of the Trademark Trial and Appeal Board, and by Plaintiff's opposing counsel, with the clerk and the opposing counsel engaging in intrinsic and extrinsic fraud; that Defendant has not abandoned the entity known as the Real Property Depot, and Plaintiff's opposing counsel has committed fraud of the first order by stating Defendant has abandoned the Real Property Depot; that Defendant is entitled to sanctions against Plaintiff for their course of fraudulent conduct, with Defendant being forced and coerced to spend money needlessly and unnecessarily to defend Plaintiff's fraudulent course of conduct; that Defendant has a clear right to file an ANSWER and AFFIRMATIVE DEFENSES and COUNTERCLAIM.

b. Granting Defendant such other and further relief as may be just.

Respectfully submitted,



Roy A. Day
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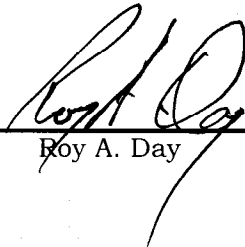
ALTERNATIVE EMAIL ADDRESS - and SPRINT PCS MOBILE and Pocket PC address:

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CERTIFICATE OF SERVICE

DEFENDANT, ROY A. DAY, hereby gives notice of filing of the following statement, since Defendant has not received each all pleadings as filed by the opposing party, and further concealed by employees in the United States Patent & Trademark Office (Trademark Trial and Appeal Board).

I HEREBY CERTIFY that I (Defendant Roy A. Day) have not received each and all documents filed by the opposing counsel in the instant action, or from the Trademark Trial and Appeal Board, excluding the "Notice of Cancellation No. 92041579" document issued by an individual identified as Latricia Harrison (See EXHIBIT "1" attached to Defendant's June 4, 2004 filings). Accordingly, at this stage of litigation, Defendant cannot comply with any rule requiring Defendant to send copies to any opposing party, since Defendant has no name or address that pertains to the entity known as "The Realty Depot of America." Defendant has been subjected to fraud of the first order.



Roy A. Day

MEMORANDUM OF LAW

3. STATEMENT OF THE ISSUE: Whether Defendant's Fifth Amendment rights were violated, and whether Defendant was subjected to fraud of the first order, and if this Board has a clear right to vacate the May 25, 2004 notice to default.

4. ISSUE: DEFENDANT'S FIFTH AMENDMENT RIGHTS WERE VIOLATED, SPECIFICALLY, DUE PROCESS, AND DEFENDANT WAS SUBJECTED TO FRAUD OF THE FIRST ORDER (INTRINSIC AND EXTRINSIC).

When Defendant received the said notice of default dated May 25, 2004 on May 28, 2004, entered by a Latricia Harrison, the aforesaid document was the first time Defendant

had any knowledge that anyone was challenging Defendant's Real Property Depot entity, when in fact, Defendant had no personal knowledge what the May 25, 2004 document was, and what it actually pertained to. Upon surmise, Defendant speculated it pertained to the Real Property Depot. Subsequently, Defendant was provided a Web site at the Trademark Trial and Appeal Board that listed the pleadings filed, and Defendant was "shocked" to see the pleadings filed, and the date they were filed (NOTE: Defendant does not have the ability to download pleadings). It was self-evident that various individuals were engaging in fraud of the first order! To ensure the record was clear and certain and full and satisfactory at this stage of litigation, Defendant filed various motions on June 4, 2004 with the Trademark Trial and Appeal Board, including but not limited to, a request to have the Federal Bureau of Investigation, investigate the aforesaid willful, intentional, wanton, malicious, and fraudulent conduct to deny Defendant the right to timely receive pleadings. The face of the record reflects that the RULES of the Trademark Trial and Appeal Board require the Clerk's Office to mail Defendant copies of the "cancellation-complaint" filed by Plaintiff's opposing counsel (Realty Depot of America), but the face of the record now reflects that the Clerk's Office willfully, intentionally, wantonly, maliciously, and fraudulently refused and continued to refuse to mail Defendant the said pleadings. Subsequently, the Plaintiff's counsel, willfully, intentionally, wantonly, maliciously, and fraudulently, did not mail Defendant copies of pleadings, contrary to the opposing counsel's statement on the said pleading, solely for the purpose to conceal the fraudulent statement that Defendant had abandoned the Real Property Depot, when in fact, Defendant has not abandoned the Real Property Depot.

The Fifth Amendment of the Constitution of the United States, states:

"No person shall be held to answer for capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public

danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

In Lassiter v Dept. of Social Services of Durham County, N.C., 452 US 18

(1981), reh den 453 US 27, the Court held:

"Due process expresses requirement of fundamental fairness."

Defendant had a clear right to timely receive the pleadings in the instant action under the RULES of the Trademark Trial and Appeal Board from the Clerk's Office pertaining to Plaintiff's "cancellation-complaint, and the subsequent willful, intentional, wanton, malicious, and fraudulent conduct of the Clerk's Office to refuse and continue to refuse to timely send Defendant the said pleadings, has denied Defendant due process and fundamental fairness as enumerated in the above-cited Lassiter case and the Fifth Amendment to the United States Constitution. There is no case that will stand on all four pertaining to the egregious conduct of the Clerk's Office to deny Defendant the pleadings on the "cancellation-complaint," but the Lassiter case is persuasive authority that Defendant was denied "fundamental fairness" with Defendant's Fifth Amendment rights being violated.

To add insult to injury, the Plaintiff's opposing counsel willfully, intentionally, wantonly, maliciously, and fraudulently refused and continued to refuse to send Defendant' each and all pleadings, including but not limited to, the Plaintiff's "cancellation-complaint," solely for the purpose to conceal and cover-up that Plaintiff had placed a fraudulent statement on the "cancellation-complaint, specifically, that Defendant had abandoned the Real Property Depot, when in fact, Defendant had not abandoned the Real Property Depot. The face of the record at the Patent and Trademark Office reflects that Defendant timely **extended** the registration of the Real Property Depot as the Federal Statutes require (**CAVEAT**: The

aforesaid extension process also involved fraud of the first order, specifically, individuals in the Clerk's Office received Defendant's Federal Express "extension-registration" pleadings, and then elected to destroy Defendant's "extension-registration" pleadings, but an honest, ethical, and law abiding citizen known as Janis Long at the Patent and Trademark Office corrected the aforesaid fraud in reference to the extension of the Real Property Depot registration).

Federal Rules of Civil Procedure, No. 55(c) states:

"Setting Aside Default. For good cause shown the court may set aside an entry of default an, if judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b)."

Federal Rule of Civil Procedure, No. 60(b), states:

"Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant"

As enumerated in the above-cited Federal Rules of Civil Procedure, No. 55c and 60b, this Board has a clear right to vacate the May 25, 2004 notice of default, since Defendant was denied copies of pleadings filed in the "cancellation-complaint" instant action, with the

overlay that Defendant has a clear right to file an ANSWER and AFFIRMATIVE DEFENSES and COUNTERCLAIM.

In Laguna Royalty Co. v. Marsh 350 F2d 817 (C.A. Tex 1965); See also Serio v Badger Mut. Ins. Co, 266 F2d 418 (C.A. Miss. 1959), certiorari denied 80 S.Ct. 81, 361 US 832, 4 LEd2d 73, the Court held:

"Mistake, inadvertence, surprise, or excusable neglect clause subd. (b) of this section for relief from a judgment, order, or proceeding taken through mistake, inadvertence, surprise, excusable neglect should be liberally construed and any doubt resolved in favor of application to set aside a judgment in order that case may be tried on the merits."

It is self-evident that Defendant would have filed an ANSWER and AFFIRMATIVE DEFENSES and COUNTERCLAIM if Defendant would have received any notice (**CAVEAT**: Notice from the Clerk's Office and by Plaintiff's opposing counsel) that the "cancellation-complaint" had been filed. Accordingly, it was a mistake, inadvertence, surprise and excusable neglect (all FOUR) on Defendant's part pertaining to Defendant's inability to file an ANSWER and AFFIRMATIVE DEFENSES and COUNTERCLAIM. Accordingly, this Board has a clear right to vacate the May 25, 2004 notice of default as enumerated in the Laguna Royalty Co. case.

In Petition of Devlas , 31 F.R.D. 130 (D.C.N.T 1962), the court held:

"A motion by a party to be relieved from a final judgment for fraud, misrepresentation or other cause, is equitable in nature and appeals to the conscience of the court, and such rule is to be liberally construed."

In Rozier v. Ford Motor Co., 573 F2d 1332, rehearing denied 578 F2d871 (C.A. Ga. 1978), the court held:

"Although it is within the discretion of the trial court whether to set aside judgment obtained through fraud, misrepresentation or other misconduct, this rule authorizing court to set aside judgment for such reasons is remedial and should be liberally construed."

In U.S. v McDonald 86 FRD 204 (D.C. Ill. 1980), the court held:

"A claim for relief from judgment on basis of 'any other reason justifying relief from operation of the judgment' is cognizable where there is evidence of extraordinary circumstances or where there is evidence of extreme hardship or injustice, and, once extraordinary circumstances or hardship is found, this rule is to be liberally applied to accomplish justice."

So justice can be served, since Defendant never received notice of the "cancellation-complaint," which includes but not limited to, fraud and misrepresentation, of the first order, this Board has a clear right to vacate the notice of default dated may 25, 2004 as enumerated in the above-cited Petition of Devlas case, and the Rozier case, and the U.S case.

In U.S. v. U.S. Currency in Sum of Three Hundred Ninety-Three Thousand Nine Hundred Sixty-Seven (\$393,967) Dollars, More Or Less, 775 FSupp 43 (E.D.N.Y. 1991), the court held:

"Claimant demonstrated excusable neglect for failing to timely file notice of claim and answer to Government for feature proceeding, as required for relief from default; despite requests by claimant's counsel that notice of forfeiture be sent to him, notice was sent to claimant at her place of confinement, and claimant gave notice to counsel when he subsequently visited her."

With Defendant being denied notice of the "cancellation-complaint," the above- enumerated U.S. case clearly demonstrates persuasive authority that Defendant has a clear right to the excusable neglect issue, even though the case does not stand on all four with the instant action.

In Caputo v. Globe Indem. Co., 41 FRD 436 (D.C.Pa 1967), the Court held:

"Plaintiff in independent action to set aside default judgment in original action could prevail only if he could show that judgment was entered against him because of some wrongdoing or misconduct of his adversary or because of accident or mistake made without any fault or negligence of himself or his agents."

It is self-evident that Defendant was subjected to "wrongdoing" and "misconduct" by the Clerk's Office, and by Plaintiff's opposing counsel. Accordingly, Defendant is without "fault or negligence" for not timely filing Defendant's ANSWER and AFFIRMATIVE DEFENSES and COUNTERCLAIM. Accordingly, this Board has a clear right to vacate the May 25, 2004 notice of default as enumerated in the above-cited Caputo case.

In West Virginia Oil & Gas Co. v George E. Breece Lumber Co., 213 F2d 702 (C.A.La. 1954), the Court held:

"A 'clerical error,' for which relief will be granted from judgment, is an error made by clerk in transcribing or otherwise."

The conduct of the Clerk's Office of the Trademark Trial and Appeal Board to willfully, intentionally, wantonly, maliciously and fraudulently not send the "cancellation-complaint," and other pleadings to Defendant, was fraud of the first order, but for the purpose of the instant motion, Defendant will identify the said conduct as a "clerical error," with this Board having a clear right to vacate the May 25, 2004 notice of default as enumerated in the above-cited West Virginia Oil & Gas Co. case.

CONCLUSION: It conclusively appears that Defendant Roy A. Day has a clear right to have the May 25, 2004 notice of default vacated, with the overlay that Defendant's Fifth Amendment rights were violated, and Defendant was subjected to fraud of the first order. Further, Defendant has a clear right to sanctions from Plaintiff.

The evidence is clear, strong, convincing, uncontroverted and unequivocal that Defendant Roy A. Day never received each and all pleadings as required by the RULES, solely for the purpose to prevent Defendant from timely defending the fraudulent "cancellation-complaint" which fraudulently stated Defendant had abandoned the Real Property Depot. Such a course has violated Defendant's Fifth Amendment rights. In addition, the evidence is overwhelming that Plaintiff's attorney of record willfully, intentionally, wantonly, maliciously, and fraudulently, refused and continued to refuse to send Defendant the "cancellation-complaint" solely for the purpose to conceal and cover-up the fraudulent statement that Defendant had abandoned the Real Property Depot, when in fact, Defendant has NOT abandoned the Real Property Depot.

Further, it conclusively appears that Defendant Roy A. Day has a clear right to sanctions against Plaintiff for the said egregious conduct.

CAVEAT: DEFENDANT IS APPEARING AS A CITIZEN-ATTORNEY FOR THE INSTANT ACTION, AND SUCH COURSE REFLECTS THAT THE INSTANT PLEADING HAS THE SAME WEIGHT OF AN AFFIDAVIT PERTAINING TO EVIDENCE ON THE FACE OF THE RECORD!