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

Proceeding	92044316
Party	Defendant ROSS, CHARLES H., JR. ROSS, CHARLES H., JR. 270 Park Avenue South Apt. 10D New York, NY 10010
Correspondence Address	ROSS, CHARLES H., JR. 1466 BROADWAY, SUITE 1603 NEW YORK, NY 10036
Submission	Motion to Vacate Default
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Signature	/ABM/
Date	11/11/2005
Attachments	Motion to vacate and declaration.pdf (7 pages)

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

In the Matter of Trademark Application
Registration No.: 2,473,836
Registrant: Charles H. Ross, Jr.
Trademark: BAD HABIT
Class: International Class 25

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Bad Habits, Inc.,		:	
	Petitioner,	:	Cancellation No. : 92-044,316
		:	
v.		:	REGISTRANT'S MOTION TO VACATE DEFAULT
		:	
Ross, Charles H., Jr.,		:	
	Registrant.	:	
		:	
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INTRODUCTION

Registrant Charles H. Ross, Jr., ("Registrant") hereby responds to the Notice of Default mailed October 12, 2005. For the reasons states herein, Registrant respectfully requests that the Default be vacated and the above-captioned proceeding allowed to continue.

ARGUMENT

1. Applicable Law

The Board will set aside a notice of default where the Registrant makes a satisfactory showing of good cause as to why default judgment should not be entered against it. TMEP § 312.02; Fed. R. Civ. P. 55(c). To establish good cause as to why default judgment should not be entered for failure to file a timely answer, the Registrant must show that (1) the delay in filing an answer was not the result of willful conduct, bad faith, or gross neglect; (2) the Petitioner was not substantially prejudiced by the delay; and (3) the Registrant has a meritorious

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TO SET ASIDE DEFAULT**

defense to the complaint. TMEP § 312.02; *Paolo's Assoc. Ltd. Partnership v. Bodo*, 21 U.S.P.Q. 2d (BNA) 1899, 1903n.2, (USPTO Commissioner of Patents and Trademarks 1991). Since the law favors deciding cases on the merits, “the courts and the Board are reluctant to grant judgments by default and tend to resolve doubt in favor of setting aside a default.” *Paolo's Assoc.*, 21 U.S.P.Q. 2d at 1902.

2. **Registrant's Delay Was Not The Result Of Willful Conduct, Bad Faith, Or Gross Neglect**

As indicated in the declaration of Charles H. Ross, the owner of Registration No. 2473836 for the Mark BAD HABIT, the delay at issue was in no way the result of willful conduct, bad faith, or gross neglect. Charles H. Ross, Jr., owns a small corporation with a principal place of business in New York City. (Ross Decl. ¶ 1). On November 7, 1996, he filed, by and through his attorney, Application Serial No. 78/194,347 for the mark BAD HABIT. (Ross Decl. ¶ 3). The application was published for opposition on November 11, 1997, and was registered on July 31, 2001. (Ross Decl. ¶ 3).

Due to an apparent error in Registrant's address with the Office, Registrant failed to receive the notice of a cancellation proceeding until a notice of default was mailed to his current business address on October 12, 2005. (Ross Decl. ¶¶ 4, 5). Until recently, the Trademark Office sent all correspondence to Registrant's attorney. (Ross Decl. ¶ 5). However, it appears that sometime in 2004, the TTAB began sending correspondence to a former personal address of Registrant. (Ross Decl. ¶ 5). The Registrant has not lived at that address since 1997, but because of his inexperience in these matters and because he thought all important correspondence was being sent to his attorney, he did not notify the USPTO of the change in his personal address. (Ross Decl. ¶ 4). In addition, at about the time that the present cancellation proceeding was initiated, Registrant was involved in an opposition proceeding pertaining to an

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unrelated mark, in which Registrant encountered similar difficulties with mail receipt, which were compounded by Registrant's difficulties in obtaining new counsel. (Ross Decl. ¶ 6).

Registrant was unaware of the commencement of this proceeding, and since Registrant was not aware of any imminent due dates pertaining to this registration, Registrant did not think to ensure that the address for this registration was correct. (Ross Dec. ¶ 6).

Registrant's delay in filing this response was not willful, in bad faith, or the result of gross neglect, but was the result of a small company with little knowledge of trademark proceedings who was actively engaged in resolving another matter before the Board.

3. Petitioner Is Not Substantially Prejudiced By The Delay

There is no suggestion that the delay at issue here substantially prejudiced Petitioner. *See, e.g., DeLorme Publishing Co. v. Eartha's Inc.*, 60 U.S.P.Q.2d 1222 (TTAB 2001) (no indication of substantial prejudice despite Registrant's six month delay in filing a response).

4. Registrant Has A Meritorious Defense To The Complaint

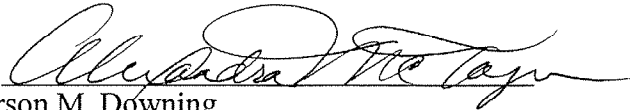
Registrant has submitted with this Motion to Set Aside Default, an Answer to the Motion for Cancellation. Registrant's mark was published for Opposition on November 11, 1997, eight years ago. Registrant first used its Mark BAD HABITS in commerce on July 30, 2000, and it was registered over four years ago on July 31, 2001.

CONCLUSION

For the foregoing reasons, Registrant respectfully requests that the Board vacate the notice of default entered against Registrant and allow the cancellation proceeding to continue.

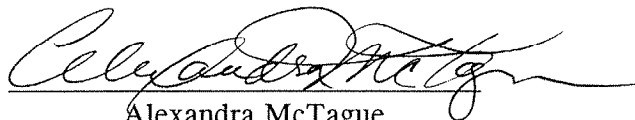
Respectfully submitted,
MORGAN & FINNEGAN, LLP

Dated: New York, New York
November 11, 2005

By: 
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Attorneys for Registrant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response to Order to Show Cause was mailed via First Class mail, postage pre-paid, on this 11th day of November, 2005 to: Melissa Linsky, Esq., 1087 Club Place, Atlanta, GA 30319.


Alexandra McTague

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

In the Matter of Trademark
Registration No.: 2,473,836
Registrant: Charles H. Ross, Jr.
Trademark: BAD HABIT
Class: International Class 25

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Bad Habits, Inc.,	Petitioner,	: Cancellation No. : 92-044,316
		: :
v.		: DECLARATION OF
		: CHARLES H. ROSS, JR.
		: :
Ross, Charles H., Jr.,	Applicant.	
----- X		

DECLARATION OF CHARLES H. ROSS

Charles H. Ross declares and states the following:

1. I am the founder and sole owner of a small clothing company with a principal place of business at 1466 Broadway, Suite 1603, New York, NY 10036. I make this declaration in support of Applicant's Motion to Vacate Default.

2. I wish to assure the Board that my failure to respond to the Petition for Cancellation is in no way due to bad faith or deliberate intent. As stated below, my failure to respond to the Petition for Cancellation in this proceeding was due to a combination of occurrences including that I was unaware of the commencement of this proceeding as a result of my failure to receive timely notice of the Petition for Cancellation and the Notice of Default, my

inexperience and the fact that I was concentrating my efforts on an opposition proceeding in which I had encountered similar difficulties.

3. I first used in commerce of the mark BAD HABIT was on July 30, 2000, after filing an intent to use application on November 7, 1996. I received Registration No. 2473836 for the mark BAD HABIT on July 31, 2001.

4. Correspondence in this matter was sent to 270 Park Avenue South, Apt. 10D, New York, NY 10010. I have not lived at that address since 1997. Due to my inexperience in Trademark Office matters I was unaware that I should notify the Office of my personal address change, since I assumed that any important correspondence would be sent to my attorney.

5. Until recently, all such correspondence was in fact sent to my attorney. It appears, however, that sometime last year, the TTAB began sending correspondence to Park Avenue South address on file, rather than to my attorney. Accordingly, I did not receive the Petition for Cancellation or Notice of Default. In fact, I did not receive any correspondence from the USPTO in this matter until the Notice of Default which was mailed to my current business address on October 12, 2005.

6. In addition, at the same time I was involved in an opposition proceeding, pertaining to an unrelated mark, before the Board, in which I encountered similar difficulties with mail receipt. These difficulties were compounded by difficulties in obtaining new counsel. Because I was not aware of any imminent due dates pertaining to this registration and was unaware of the commencement of this proceeding, I did not think to check Patent Office records to ensure that my address was correctly listed with respect to this registration.

I declare under the penalty of perjury the foregoing is true and correct. Executed on the 11th day of November, 2005.

By: Charles H. Ross, Jr.
Charles H. Ross, Jr.