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

Proceeding	92047210
Party	Defendant The Noman Company B.V.
Correspondence Address	NOMAD COMPANY B.V., THE EDISONSTRAAT 82 6902 PK ZEVENAAR, NETHERLANDS
Submission	Other Motions/Papers
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Date	09/07/2007
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Nomadic, Inc.,)	
)	
)	Cancellation No. 92047210
Petitioner,)	
)	Registration No. 1,543,541
v.)	
)	Date of Issue: June 13, 1989
The Nomad Company, B.V.,)	
)	Subject Mark: NOMAD & Design
Registrant)	

**REGISTRANT’S MOTION TO SET ASIDE NOTICE OF DEFAULT
AND ACCEPT REGISTRANT’S ANSWER WITH BRIEF IN SUPPORT**

Registrant The Nomad Company, B.V. (“Nomad”), by its attorneys, Honigman Miller Schwartz & Cohn LLP, moves this Court, pursuant to TBMP 312.02 and Fed. R. Civ. P. 55(c) to set aside the Notice of Default again it in this matter and accept its Answer, attached hereto as Exhibit A.

The Trademark Trial and Appeal Board’s policy of restraint in granting default judgments based on a party’s untimely answer is set forth in the Manual of Procedure (“TBMP”), where the Board recognizes that: “it is the policy of the law to decide cases on the merits. Accordingly, the Board is very reluctant to enter a default judgment for failure to file a timely answer, and tends to resolve any doubts in favor of the defendant.” TBMP 312.02

In keeping with its expressed policy, Registrant requests that the Board grant its motion to have this matter heard on its merits, especially as Registrant, which has held the challenged registration for almost 20 years, satisfies all of the following criteria set forth in the TBMP for a default judgment not to be entered:

- (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.”

TBMP 312.02.

Registrants’ Delay Was Not A Result Of Willful Misconduct Or Gross Neglect

Registrant’s delay in filing its Answer was not the result of willful conduct or gross neglect. Rather, it is attributable simply to the fact that Registrant is a Dutch corporation operated primarily by non-English speaking individuals, who do not have an effective understanding of the procedures of the Trademark Trial and Appeal Board. Instead of making a timely Answer, Registrant thus attempted to resolve this matter as part of a global settlement with Petitioner that would also have resolved Registrant’s complaint of Petitioner’s infringement on its marks in the European Union.

Registrant was ultimately informed, however, by U.S. counsel that its continuing attempt at negotiation does not obviate its obligation to file an Answer in this matter, and Registrant thereafter instructed counsel to file an Answer and to move to set aside the Notice of Default entered in this matter.

Petitioner Will Not Be Substantially Prejudiced By The Delay

Registrants’ delay in filing its Answer will not “substantially prejudice[]” Petitioner. By its Petition for Cancellation, Petitioner appears merely to be seeking to have Registrant’s mark cancelled so that it can proceed with its own registration for the mark NOMADIC’S. Petitioner notes in its Petition that it is the owner of common law rights in this mark for use in conjunction with the sale of various goods. If this is correct, Petitioner is already using the mark in

commerce. Any delay in this action would not prevent Petitioner from continuing this use, and Petitioner has not explained how a delay in registering its mark on the Principal Register will otherwise result in “substantial[] prejudice.”

Registrant Has A Meritorious Defense To The Action

Registrant has raised meritorious defenses to Petitioner’s action by its responses in the attached Answer to each allegation raised in the Petition to Cancel. Specifically, Registrant has denied each of the grounds for cancellation raised by the Petitioner. This is sufficient to meet the criteria for setting aside the Notice of Default pursuant to TBMP 312.02, which makes clear that “[t]he showing of a meritorious defense does not require an evaluation of the merits of the case.”

CONCLUSION

For the reasons set forth above, Registrant respectfully requests that the Trademark Trial and Appeal Board set aside the Notice of Default entered in this action and accept Registrant's attached Answer.

Respectfully submitted,

By: /s/ Jason R. Abel
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Attorneys for Registrant The Nomad Company,
B.V.

Dated: September 7, 2007

Exhibit A

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

Nomadic, Inc.,)	
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)	Cancellation No. 92047210
Petitioner,)	
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The Nomad Company, B.V.,)	
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Registrant)	
)	

ANSWER TO PETITION FOR CANCELLATION

Registrant, The Nomad Company, B.V. (“Registrant”), through its attorneys Honigman Miller Schwartz and Cohn LLP, for its Answer to the Petition for Cancellation filed by Petitioner Nomadic, Inc. (“Petitioner”), states as follows.

Registrant admits that it is a Dutch corporation with principal place of business at Edisonstraat 82, 6902 Zevenaar, The Netherlands. Registrant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in the first unnumbered paragraph preceding paragraph 1 of the Petition for Cancellation and, therefore, leaves Petitioner to its proofs.

1. Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Petition for Cancellation and, therefore, leaves Petitioner to its proofs.

2. Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Petition for Cancellation and, therefore, leaves Petitioner to its proofs.

3. Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Petition for Cancellation and, therefore, leaves Petitioner to its proofs.

4. Registrant denies as untrue the allegations contained in paragraph 4 of the Petition for Cancellation.

5. Registrant denies as untrue the allegations contained in paragraph 5 of the Petition for Cancellation.

6. Registrant denies as untrue the allegations contained in paragraph 6 of the Petition for Cancellation.

WHEREFORE, Registrant respectfully requests that the Trademark Trial and Appeal Board dismiss the Petition for Cancellation with prejudice and award Registrant its costs and such other relief as it deems appropriate.

AFFIRMATIVE AND OTHER DEFENSES

A. The Petition for Cancellation fails to state a claim upon which relief may be granted.

B. Because one or more of Petitioner's applications recite goods in connection with which its marks are not used, such application(s) are invalid or void *ab initio*.

C. Applicant reserves the right to add additional affirmative defenses and counterclaims as this case and discovery proceeds.

Respectfully submitted,

By: /s/ Jason R. Abel
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Attorneys for Registrant The Nomad Company,
B.V.

Dated: September 7, 2007

CERTIFICATE OF TRANSMITTAL

I hereby certify that on September 7, 2007, this correspondence is being electronically transmitted in PDF format to the Trademark Trial and Appeal Board through the Electronic System for Trademark Trials and Appeals (ESTTA).

/s/ Jason R. Abel

CERTIFICATE OF SERVICE

I hereby certify that on September 7, 2007, this correspondence is being deposited with the United States Postal Service as First Class mail, postage prepaid, in an envelope addressed to counsel for Petitioner as follows:

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/s/ Jason R. Abel

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