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

Proceeding	92057500
Party	Defendant BeeNaturals, Inc.
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Date	06/01/2015
Attachments	response to Board's May 2, 2015 order.pdf(14832 bytes)

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

ORBIS DISTRIBUTION, INC.	)	
	)	
Petitioner,	)	
	)	Cancellation No. 92057500
v.	)	
	)	Reg. No. 3197276
BEE NATURALS, INC.	)	
	)	
Respondent.	)	

RESPONDENT'S COMBINED RESPONSE TO THE BOARD'S MAY 2, 2015 ORDER AND MOTION TO ACCEPT RESPONDENT'S ANSWER TO THE AMENDED PETITION

In response to the Board's May 2, 2015 Order ordering BeeNaturals, Inc. ("BeeNaturals") to show cause why default judgment should not be entered, BeeNaturals responds as follows:

On February 9, 2015, Petitioner filed an amended petition inserting paragraphs 36A-36F, 36H-36S, 43A-43C and 44D-44P, which amended Petitioner's fraud counts after the Board found the original pleadings legally deficient. Petitioner served a copy of the amendment upon Respondent by mail, which Respondent did receive. However, Petitioner's attorney did not docket the deadline for the served amendment to the petition, as it is Petitioner's attorney's practice to docket pleadings when the electronic notice of filing is received from the judicial body. Respondent's attorney never received electronic notice of the filing of the amendment to the petition from the TTAB.

In fact, upon review of the TTAB docket for this matter, Respondent has received no electronic notices for documents filed by Petitioner from the TTAB since Respondent's attorney filed a change of address with the TTAB on January 9, 2015, including the amended petition and a discovery report filed by Petitioner on April 9, 2015.

Respondent's attorney contacted the TTAB to determine whether TTAB records also indicate that electronic notice was not received, but was unsuccessful in determining whether such TTAB records exist.

Respondent did receive electronic notice of the Board's May 2 and May 11 orders, but not electronic notice of Petitioner's intervening motion for summary judgment filed May 3.

As a result of Respondent's attorney's practice of docketing deadlines when electronic notice of filing is received from the court, a deadline for the answer to the amended petition was not docketed. Respondent's attorney recently created a new firm, and though it creates redundant effort, in view of the missed deadline Respondent's attorney has amended his practice and will docket deadlines based upon receipt of paper service copies ***and*** electronic copies for future filings.

With this filing, Respondent submits its answer to the amended petition and moves that the TTAB accept its late filing. As will certainly be no surprise to Petitioner, the amended answer denies Petitioner's new allegations of fraud. Moreover, Petitioner has served no discovery and taken no action to advance this cancellation proceeding between its February 6 filing of the petition and the Board's May 2 notice of default. Petitioner will suffer no prejudice based upon this delay and suffers no surprise based upon Respondent's denials of Petitioner's amended allegations of fraud. Dismissal in view of non-receipt of the TTAB's electronic notice of filing would be particularly harsh given the meritorious defenses Respondent has to Petitioner's allegations of fraud.

Default judgment is disfavored and the Board prefers to decide cases upon the merits. *DeLorme Publishing Co. v. Earthaís Inc.*, 60 U.S.P.Q.2d 1222 (T.T.A.B. 2001). Default judgment should only be granted when the delay in filing was not the result of willful conduct or

gross neglect, the delay will not result in substantial prejudice to the other party, AND the defendant has a meritorious defense. *Id.*

As discussed above, Respondent's practice of docketing upon receipt of electronic notice from the judicial body is not willful misconduct or gross negligence. Furthermore, Petitioner has taken no action in the intervening period between the February 9 petition and the Board's May 2 order, has yet to serve any discovery in this cancellation proceeding, and will suffer no prejudice.

Respondent also submits that it has meritorious defenses. Specifically, Petitioner has misinterpreted Missouri law by alleging that an administratively dissolved corporation ceases to exist, see RSMO 351.486, but rather "A corporation administratively dissolved continues its corporate existence … and any officer or director who conducts business on behalf of a corporation so dissolved except as provided in this section shall be personally liable for any obligation so incurred." *See* 351.486.3 RSMo.

Moreover, Respondent has a meritorious defense that during the period of administrative dissolution, it existed as a *de facto* corporation.

Moreover, Respondent has a meritorious defense that its corporation was reinstated by the Missouri Secretary of State and such reinstatement relates back to the date of dissolution. See RSMO 351.488.3 ("When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.")

In view of the above, it is respectfully submitted that the Board should not enter default judgment against BeeNaturals and Respondent requests that the Board grant this motion to accept the late-filed Answer to Petitioner's Amended Petition.

Respectfully Submitted,

By: /Nelson D. Nolte/

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the forgoing is being served via first class U.S. mail postage pre-paid this 1st day of June 2015 upon the following:

John M Bolger
Bolger Legal Group LLC
PO Box 170616
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Attorney for Plaintiff

/Nelson D. Nolte/