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

Proceeding	92057500
Party	Plaintiff Orbis Distribution, Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application Serial Number: 78/368710
Registration Number: 3197276
For the Mark: Bee Naturals

Orbis Distribution, Inc, Plaintiff, v. Bee Naturals, Inc., Defendant.

Cancellation Number:
92057500

**PLAINTIFF’S RESPONSE TO
DEFENDANT’S MOTION TO
ACCEPT DEFENDANT’S ANSWER
TO THE AMENDMENT OF THE PETITION**

The Board issued a Notice of Default against the Defendant and requested a response. The Defendant has finally responded to the Board. It has also submitted an Answer to the Amendment to the Complaint, which was filed nearly four months after the Amendment to the Complaint was made.

The Plaintiff now submits this Response and Brief in Support.

FACTS

The Plaintiff served its Amendment to the Petition to Cancel on February 6, 2015. (Certification of Service, Amendment to Petition to Cancel Regarding Allegations of Fraud, 2/6/15, 8.) In January, the Board had ordered the Defendant to respond within 30 days of service of the Amendment. (Board Order, 1/8/15, 11.) In May 2, the Board found that the Defendant did not meet this deadline and issued a Notice of Default. (Board Notice of Default, 5/2/15.) On June 1, the Defendant submitted its brief, in an attempt to show good cause.

LAW

A. The Standard for Default Judgment.

“[T]he standard for determining whether default judgment should be entered against the defendant for its failure to file a timely answer to the complaint is the Fed. R. Civ. P. 55(c) standard, that is, whether the defendant has shown good cause why default judgment should not be entered against it.” TBMP § 312.01. Federal Rule of Civil Procedure 55(c) states that “[t]he court may set aside an entry of default for good cause.”

In order to prove good cause, a party must show three things: good cause is generally found where “(1) the delay in filing is not the result of willful conduct or gross neglect, (2) the delay will not result in substantial prejudice to the opposing party, and (3) the defendant has a meritorious defense.” TBMP § 312.02; DeLorme Publishing Co. v. Eartha’s Inc., 60 USPQ2d 1222, 1223 (TTAB 2000). If a defendant, which does not answer a complaint in a timely manner, fails to prove only one of these three conditions, a finding of a default judgment may be entered it. DeLorme Publishing, 60 USPQ2d at 1224 (although no specific prejudice to opposer, and while meritorious defense was shown, Board found applicant’s conduct amounted to gross neglect and granted motion for default judgment where applicant filed its answer six months late, viewing the notice of opposition as “incomplete,” instead of filing appropriate motion or taking other appropriate action).

B. Docketing Errors and Other Similar Excuses are Disfavored.

Alleged docket errors and other similar excuses are disfavored by the Board because they are wholly within the counsel’s control. Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co., 55 USPQ2d 1848, 1851 (TTAB 2000) (counsel’s press of other business, docketing errors and misreading of relevant rule are circumstances wholly within counsel’s control); see

also Pumpkin Ltd. v. The Seed Corps, 43 USPQ2d 1582, 1588 (TTAB 1997) (motion to reopen filed over three months after close of testimony period, due to a docketing error, denied).

C. A Party's Repeated Failures and Years of Conduct Must Be Examined.

Repeated failures to respond to Board orders may also result in a default judgment:

Default judgment may be warranted in cases of repeated failure to comply with reasonable orders of the Trademark Board, when it is apparent that a lesser sanction would not be effective. See MHW, Ltd. v. Simex Aussenhandelsgesellschaft Savelsberg KG, 59 USPQ2d 1477 (TTAB 2000) (“The law is clear that if a party fails to comply with an order of the Board relating to discovery, including an order compelling discovery, the Board may order appropriate sanctions as defined in Trademark Rule 2.120(g)(1) and Fed.R.Civ.P. 37(b)(2), including entry of judgment.”); Baron Philippe de Rothschild S.A. v. Styl-rite Optical Mfg. Co., 55 USPQ2d 1848, 1854 (TTAB 2000) (“Default judgment is a harsh remedy, but it is justified where no less drastic remedy would be effective, and there is a strong showing of willful evasion.”).

Benedict v. Super Bakery, Inc., 665 F.3d 1263, 1268-69 (Fed. Cir. 2011). “The possession of a trademark registration places a routine obligation on the possessor to participate in reasonable procedures concerning rights or interests affected by that registration.” Id. at 1269. The Board must look at the entirety of the record in determining whether a party has not participated in this manner. Where “[i]t is obvious from a review of the record [that a party has] been engaging for years in delaying tactics, including the willful disregard of the Board’s orders,” MHW, Ltd., 59 USPQ2d at ¶ 9, a judgment in favor of the opposing party may be granted.

D. An Administratively Dissolved Corporation Cannot Conduct Any Business.

Sections 351.476 and 351.486 of the Missouri Statutes provide that once administratively dissolved, a corporation cannot conduct any business.

E. Federal Law Provides that a Trademark Must be Used in Commerce.

A mark must be used in the ordinary course of trade. 15 U.S.C. § 1127. A Declaration of Use must show continuous use and be filed by the then-current owner. 15 U.S.C. § 1058.

ARGUMENT

A. Default Judgment is Appropriate Because the Defendant Has Not Proved Good Cause.

As shown above in the law section, the good cause standard in failing to answer is only satisfied when all of the three conditions are met: “(1) the delay in filing is not the result of willful conduct or gross neglect, (2) the delay will not result in substantial prejudice to the opposing party, and (3) the defendant has a meritorious defense.” TBMP § 312.01; DeLorme Publishing Co. v. Eartha’s Inc., 60 USPQ2d 1222, 1223 (TTAB 2000). If only one of these three conditions is proved against the Defendant, default judgment is proper. For example, in DeLorme Publishing, although no specific prejudice to the opposer was found, and while a meritorious defense was shown, the Board found that the applicant’s conduct amounted to gross neglect and granted motion for default judgment where it filed its answer six months late, viewing the notice of opposition as “incomplete,” instead of filing an appropriate motion or taking other appropriate action. DeLorme Publishing at 1224 (emphasis added).

1. The delay in filing is the result of willful conduct or gross neglect.

Here, the Defendant waited four months to file its Answer to the Amendment to the Complaint and did not do so until ordered by the Board.¹ This lapse was allegedly due to its attorney’s failure to docket the deadline because the Defendant was served with the Amendment to the Complaint by mail, rather than electronically.

However, the Order of the Board established the deadline in which the Defendant was to respond, specifically stating that the Defendant was “allowed until THIRTY DAYS from the date of service” to file an answer. (Board Order, 1/8/15, 11.) Therefore, the Defendant’s excuse that it allegedly failed to docket the deadline is ridiculous. (Id.) All counsel for the Defendant

¹ As with every document filed by the Defendant, the Defendant delayed the proceedings, waiting until the last possible day to respond to the Board’s Notice of Default.

needed to do was read the Board's order. (Id.) Its attorney knew the deadline could not be later than early March. (Id.) Thus, a failure to submit *something* near that date, pursuant to the Board order, upon receiving Amendment must constitute gross neglect and/or willful conduct. (Id.)

Likewise, the Board asked the Plaintiff to enter an amendment regarding the fraud allegations because of a previous motion of the Defendant. Thus, the date for filing an answer was wholly within the Defendant's control: the cause necessitating its action was due to the Board partially granting its own motion.

Additionally, even if the Board accepts the Defendant's excuse that its attorney failed to docket the date due to some mysterious belief that documents served by mail do not need to be answered (versus those sent via email), such behavior would surely be contrary to most basic practices of law governing attorney conduct, again constituting gross neglect or willful conduct. Thus, regardless of whether the lapse occurred due to the attorney's failure to docket the deadline upon receiving the Amendment to the Complaint, or due to his failure to read the Board's order and note the relevant deadline, either act must be considered gross neglect or willful conduct.

This alleged error is not the first "docketing error" for the defendant. It is one of many. The Plaintiff believes that the Defendant may have made this excuse, or a very similar one, no fewer than eight times over the course of this case.

The Defendant, by counsel, appears to maintain that its docketing errors do not constitute willful conduct. However, alleged docket errors and other similar excuses are disfavored by the Board because they are wholly within the counsel's control. Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Manufacturing Co., 55 USPQ2d 1848, 1851 (TTAB 2000) (counsel's press of other business, docketing errors and misreading of relevant rule are circumstances wholly within counsel's control); *see also* Pumpkin Ltd v. The Seed Corps, 43 USPQ2d 1582, 1588

(TTAB 1997) (motion to reopen filed over three months after close of testimony period, due to a docketing error, denied)(emphasis added). Thus, these errors constitute willful conduct or gross neglect, and the Board should ignore these alleged and bizarre excuses.

2. The delay has resulted in substantial prejudice to the Plaintiff.

Justice delayed is often justice denied. The Defendant has been hoping that this legal maxim will prove to be true. It has stalled in order to drag out these proceedings as long as possible, increase the cost of litigation, and prevent the Board from entering a decision on the merits. It waited until it was ordered by the Board in May to answer the Amendment to the Complaint, and then offered a litany of bizarre excuses, even though the deadline of 30 days for filing its Answer to the Amendment was established in the Order of the Board in January of this year and was the direct result of its own motion. (Board Order, 1/8/15, 11.)

In fact, the Defendant has shown a repeated pattern of avoidance, failure to answer, failure to submit documents in a timely manner, submission of documents without legal citation, submission of untimely documents, refusal to discuss Discovery Conference items until the eleventh hour, and failure to follow Board orders. The Board should examine its own orders regarding the Defendant's behavior as well as the repeated pattern exhibited by the Defendant. The Defendant wants to increase the cost of litigation and drag out these proceedings. Thus, default judgment is warranted:

Default judgment may be warranted in cases of repeated failure to comply with reasonable orders of the Trademark Board, when it is apparent that a lesser sanction would not be effective. *See* MHW Ltd. V. Simex Aussenhandelsgesellschaft Savelsberg KG, 59 USPQ2d 1477 (TTAB 2000) (“The law is clear that if a party fails to comply with an order of the Board relating to discovery, including an order compelling discovery, the Board may order appropriate sanctions as defined in Trademark Rule 2.120(g)(1) and Fed.R.Civ.P. 37(b)(2), including entry of judgment.”); Baron Philippe de Rothschild S.A. v. Styl-rite Optical Mfg. Co., 55 USPQ2d 1848, 1854 (TTAB 2000) (“Default

judgment is a harsh remedy, but it is justified where no less drastic remedy would be effective, and there is a strong showing of willful evasion.”).

Benedict v. Super Bakery, Inc., 665 F.3d 1263, 1268-69 (2011). The Defendant has failed to answer the Board with any real explanation for its failures and is avoiding engaging in these proceedings time and again. “The possession of a trademark registration places a routine obligation on the possessor to participate in reasonable procedures concerning rights or interests affected by that registration.” Id. at 1269. The Board must look at the entirety of the record in determining if the Defendant has participated or is instead engaging in delaying tactics. Where “[i]t is obvious from a review of the record [that a party has] been engaging for years in delaying tactics, including the willful disregard of the Board’s orders,” MHW, Ltd., 59 USPQ2d at ¶ 9, a judgment in favor of the opposing party may be granted. In this case, it is very obvious from a simple review of the record that this party has been engaging for two years in delaying tactics, including the willful disregard of Board orders.

Again, the Defendant is claiming that it failed to calendar the deadline for response to the served Amendment. This sort of “the dog ate my homework” excuse is precisely what the Defendant has made repeatedly since the inception of the lawsuit. Its counsel has blamed these numerous lapses of various culprits: his secretary, his paralegal, a former partner of his law former firm, his associate, his former law firm, his new one, opposing counsel, his client, the United States Post Office, the Missouri Secretary of State, the Missouri bureaucracy, the Board’s recordation system of his email, and now, apparently, himself and the Board itself. The Defendant has repeatedly ignored litigation deadlines, Board ordered-deadlines, and Board orders themselves. It has refused to answer the most basic questions posed to it regarding the Discovery Conference and engaged in similar stalling tactics throughout this two-year lawsuit, thus needlessly increasing the cost of litigation and preventing the Board from reaching a

decision on the merits. As a result, this delay, in combination with the rest of the Defendant's behavior, has substantially prejudiced the Plaintiff, as has the Defendant's pattern of failure to follow the most basic Board orders. The Board should not allow this pattern to continue.

3. The Defendant does not have a meritorious defense.

The Defendant does not have a meritorious defense because the Defendant as a matter of law and based on its own admissions in its Answer could not have used the mark in commerce during the period of dissolution, during which it is illegal for a dissolved corporation to conduct any business. The Defendant has admitted it was administratively dissolved. (Defendant's Answer, ¶¶24-25.) The Defendant was administratively dissolved in 2006. (Petition to Cancel, Exhibit D.) The mark was registered in 2007. (TSDR, Serial Number 78368710, Registration Certificate.) The Defendant did not reinstate its company until April 29, 2014. (TTAB Record.)

The Defendant has admitted that a corporation when dissolved cannot carry on any business. (Defendant's Answer, ¶26.) Specifically, the Defendant answered two allegations by admitting that Missouri does not authorize an administratively dissolved corporation to carry on business except to wind up and liquidate its business and referenced two sections of the Missouri statutes in support. (*Id.* at ¶¶24, 26.) Sections 351.476 and 351.486 of the Missouri Statutes are incorporated into the Defendant's Answer. (*Id.*) These two separate statutes provide that once administratively dissolved, a corporation cannot conduct any business, except that necessary to wind up its affairs and liquidate its assets. Thus, the Defendant's own admissions in its Answer prove that it could not have used the mark as a matter of law, and thus, it has no rights to the mark.

A registered trademark may be canceled if it has been abandoned. 15 U.S.C. 1064(3). "Nonuse for 3 consecutive years shall be prima facie evidence of abandonment." 15 U.S.C.

1127. “‘Use’ of a mark means the bona fide use of such mark made in the ordinary course of trade, and not made merely to reserve a right in a mark.” Id. Thus, pursuant to federal law and the Defendant’s admissions in its Answer, it could not have used the mark in commerce.

Likewise, the United States federal trademark laws provide that a Section 8 Declaration of Use must be executed by and filed in the name of the then-current owner of the trademark and state that the mark has been used in continuous commerce. 15 U.S.C. § 1058(a)&(c). Use also must also be for five consecutive years. Id. If the affidavit or declaration was filed in the name of the wrong party, and there is no time remaining in the grace period, the registration will be cancelled. Id. Because ownership depends upon use in commerce and the Defendant did not use the mark in commerce, the Defendant was not the owner at the time the Section 8 Declaration was filed. Thus, pursuant to its own admissions, the mark must be cancelled.

Furthermore, the Defendant’s argument regarding a de facto corporation is nothing more than a smoke screen. A de facto corporation that is doing business illegally cannot own a mark for the purpose of a federal trademark registration, nor can a de facto corporation file a Section 8 Declaration of Use. The Defendant’s argument would effectively destroy both corporate law and trademark law. If the Defendant’s argument were to succeed, no corporation would need to maintain its state status as a corporation (or pay taxes) and could essentially conduct business without the inconvenience of being held accountable to the public for its actions; meanwhile, the federal requirements of use in commerce and ownership of a trademark for the purpose of registration would be rendered utterly meaningless.

Therefore, no meritorious defense exists.

Because the Defendant cannot meet even a single condition of the three-part good cause standard, default judgment is proper.

B. The Defendant's Brief Contains Improper Statements of Law and Fact.

Within its Motion and Brief in Support, the Defendant engages in numerous statements that have no factual or legal support. This is contrary to the Board rules. Specifically, the attorney for the Defendant has made numerous statements that are simply false, have no support from an affidavit or other supporting documents, and/or have no legal support. Such statements are presented and discussed below:

1. The Defendant states the following: "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." (Defendant's Brief, 6/1/15, 1.)

This is a typo. It is not the Plaintiff's attorney's responsibility to tell the Defendant's attorney when he must file an answer to an amendment. The Defendant's attorney means "Defendant's attorney did not docket the deadline for the served amendment to the petition, as it is Defendant's attorney's practice to docket pleadings when the electronic notice of filing is received from the judicial body." (See id.)

Furthermore, even with the amendment of this typo, the Defendant's statement is incomprehensible. The concept that an attorney would not docket a deadline for a response to a document served by mail is quite simply willful conduct and gross neglect.

2. The Defendant writes the following four statements, each of which is essentially a misunderstanding of the rules governing practice before the Board:

a. "Respondent's attorney never received electronic notice of the filing of the amendment to the petition from the TTAB." (Id., 1.)

b. “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.” (Id.)

c. “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.” (Id., 2.)

d. “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.” (Id.)

These four statements demonstrate two things: first, the Defendant received the documents themselves, but apparently ignored them or was inexplicably waiting for a notice of the documents’ existence to arrive from the Board; second, these statements show the Defendant’s counsel’s unfamiliarity with the Trademark Trial and Appeal Board procedures. “Whenever the Board takes an action in a proceeding before it, the Board sends a copy of the action to each party or to the party’s attorney or other authorized representative.” TBMP, § 117.01. The Board rule does not say anything about sending a notice to a party that a document has been filed by the opposing party.

Again, the Defendant has admitted it received the served Amendment from the Plaintiff. Therefore, although the Defendant’s claim that the Board failed to provide the Defendant with a notice that this document had been filed is a slightly bizarre point for counsel for the Defendant to raise, it does not constitute a legitimate reason for failing to answer. Counsel for the Defendant may misunderstand the relevant rules, but that does not warrant the Defendant’s

failure to comply with a Board order to serve its Answer. Furthermore, as shown above, such errors in docketing and in misunderstanding the relevant rules of the Board are circumstances wholly within counsel's control. Baron Philippe de Rothschild, 55 USPQ2d at 1851. Failure to address circumstances wholly within counsel's control is essentially the same as willful conduct and gross neglect, and therefore prove that the failure to answer was both.

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." (Defendant's Brief, 6/1/15, 2.)

Again, it is counsel's responsibility to note and follow all deadlines. He has an obligation to follow Board orders as well. Failure to do so is both willful conduct and gross neglect.

4. The Defendant also states: "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." (Id.)(emphasis in the original.)

This statement is as bizarre as the rest of the Defendant's case. The "redundant effort" comment is simply baffling. An attorney who does not docket or calendar a deadline for a response that was mandated by a court order has done so by virtue of willful conduct or gross neglect. Likewise, an attorney who does not note a deadline for a response when he or she is served with a document by mail that requires such a response has committed willful conduct or gross neglect.²

Using the Defendant's logic, a party to a lawsuit or Board proceeding could virtually ignore all served documents by the other side, effectively picking the date of its response at will.

² The parties did not agree until April, 2015 to serve all documents as pdf attachments by email, return receipt requested with a courtesy phone call placed to opposing counsel.

This “excuse” or alleged mistake of the Defendant is obviously contrary to the standards of attorney practice. It is willful conduct, and it is gross neglect.

5. The Defendant also cites to improper law: “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., 2-3.)(emphasis in the original.) The Defendant cites to DeLorme Publishing (without providing a pinpoint citation) for the premise that all three findings are necessary in order to grant default judgment. However, this citation is incorrect. Only one of the three findings is necessary to establish a default judgment. DeLorme Publishing at 1224 (finding of gross neglect warranted a default judgment where answer filed late); see also TBMP § 312.02.

6. The Defendant further states: “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.” (Id., 3.)

This statement is both misleading and false. It is false because the Defendant refused to answer many of the requests from the Discovery Conference. Thus, the fact that the Plaintiff repeatedly requested by phone and email that the Defendant comply with the Board order (and answer the Discovery Conference questions that were not immediately resolved) constitutes action in attempt to advance this case. It is misleading because the period for discovery only recently opened, and more importantly, discovery is not warranted in this case because the only issues that remain are legal ones; thus, Discovery is unnecessary. The Defendant is stalling for time and attempting to drive up the costs of litigation, as it has been from the beginning of the case. The Plaintiff asks that the Board note the broad pattern of the Defendant’s behavior and act accordingly.

7. The Defendant further states: “As discussed above, Respondent’s practice of docketing upon receipt of electronic notice from the judicial body is not willful misconduct or gross negligence.” (Id.) Here, the Defendant by counsel misstates the applicable standard of law, using “misconduct” instead of “conduct” and “negligence” instead of “neglect” (misconduct and negligence begin more difficult to prove than conduct and neglect). Further, even with this amendment, the Defendant’s attorney’s alleged practice is both willful conduct and gross neglect. It is contrary to the rules governing procedures before the Board and contrary to the standards governing the profession. It is also part of a long pattern of behavior in which the Defendant has engaged. The Board should find so and dismiss the case.

8. The Defendant argues:

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.

This argument is contrary both to the facts of the case and to the applicable law.

- a. The Plaintiff alleged that the mark was abandoned. The Defendant ignores this.
- b. The Plaintiff alleged that the Defendant’s mark could not have been used in commerce. The Defendant also ignores this.
- c. The Defendant has removed essential language from the quotation of the statute that provides that such a dissolved company cannot carry on any business. The Defendant has purposely removed this language to suit its purposes and also ignores its import in this case.
- d. The Plaintiff has shown that a mark must be used in commerce pursuant to federal law in order for rights to be established. However, the Defendant ignores that too, thinking that illegal use in commerce constitutes use in commerce. It does not.

9. The Defendant also states as follows:

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.')

As shown above, this statement of law is both contrary to the facts of the case and contrary to the applicable law.³ Specifically, two Missouri State statutes, federal law, and numerous state and federal cases are contrary to the Defendant's position. In fact, the only way that the Defendant's position could be granted as tenable is if the Board were to change the laws of corporations in the State of Missouri, and more importantly, the laws pertaining to the United States federal trademark concerning use in commerce and ownership. Therefore, the Board should ignore the Defendant's brief and impose a default judgment against it.

CONCLUSION

The Defendant has not shown good cause for its lapse in failing to answer. Rather, the Defendant has shown both willful conduct and gross negligence. It has shown a pattern of such behavior for two years. This behavior has prejudiced the Plaintiff. Moreover, the Defendant, by its own admissions and as matter of law, does not have any meritorious defenses.

Therefore, the Board should grant a default judgment against it.

Dated: June 4, 2015

Respectfully Submitted,
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³ This argument is briefed on Pages 8-9 of this Brief.

CERTIFICATION OF SERVICE

I hereby certify that a true and correct PDF copy of this Motion for Summary Judgment (per the Discovery Conference stipulation) was sent via email, delivery and read receipt requested to counsel for the Defendant at the email listed below on June 4, 2015, and that a courtesy phone call was also placed to him:

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