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Filing date: **03/03/2017**

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

Proceeding	92065031
Party	Plaintiff LUV.IT Technologies Inc.
Correspondence Address	LISEL M FERGUSON PROCOPIO CORY HARGREAVES & SAVITCH LLP 525 B STREET SUITE 2200 SAN DIEGO, CA 92101 UNITED STATES calendar@procopio.com, lisel.ferguson@procopio.com, pamela.lawson@procopio.com, jamie.quent@procopio.com, michele.fuger@procopio.com
Submission	Opposition/Response to Motion
Filer's Name	Lisel M. Ferguson
Filer's e-mail	lisel.ferguson@procopio.com, calendar@procopio.com, michele.fuger@procopio.com
Signature	/Lisel M. Ferguson/
Date	03/03/2017
Attachments	2017-3-3 AMENDED Opposition_to_Motion_for_Order_to_Show_Cause_re_Default_Judgment_92065031.pdf(139817 bytes) 2017-3-3 AMENDED LMF_Declaration_ISO_AMENDED Opposition_to_Motion_for_Order_to_Show_Cause_re_Default_Judgment_92065031.pdf(344225 bytes)

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

LUV.IT Technologies Inc., a Delaware
Corporation

Petitioner,

v.

Bedrock VC, Inc., a Delaware Corporation.

Registrant.

Cancellation No.: 92065031

In the Matter of Trademark
LOVE IT (logo)

Registration No. 4463057

Registered: January 7, 2014

Owner: Bedrock VC, Inc

Registered For: Goods/ Services in
International Class Nos. 9, 35, 38, 41, 42, and
45

Cancellation For: Goods/Services in
International Class Nos. 9 and 42

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

**AMENDED OPPOSITION TO DEFENDANT’S MOTION FOR AN ORDER TO
SHOW CAUSE RE DEFAULT JUDGMENT**

LUV.IT Technologies Inc. (“Petitioner” or “LUV.IT”) respectfully opposes Registrant Bedrock VC, Inc.’s (“Registrant” or “Bedrock”) Motion for an Order to Show Cause re Default Judgment (“Motion”). The Declaration of Lisel M. Ferguson is attached to the instant Opposition to include the Exhibit 1 mentioned hereafter. This Motion filed by Bedrock is frivolous and was only done to cost Petitioner and the TTAB additional time and expense. As stated in Registrant’s Motion the day on which to hold a discovery conference was February

28, 2017. Unfortunately, the parties did not conduct the conference on or before February 28, 2017, however, prior to contacting Petitioner at any time before or after this conference was due to be held, Registrant filed the instant Motion instead of contacting Petitioner's counsel.

I. FACTS

The Board issued a Scheduling Order on December 20, 2016. In this Scheduling Order it required "the parties" to jointly schedule and hold a Discovery Conference on or before February 28, 2017. Petitioner's counsel sent an email to Registrant's counsel on the weekend of February 26, 2017 asking whether they could conduct the discovery conference on the 27th or 28th of February. (Declaration of Lisel M. Ferguson, counsel of Petitioner ¶2.) ("Ferguson Decl."). Petitioner's counsel never received a response to this email which was sent via cell phone and Petitioner's counsel failed to follow up with Registrant's counsel due to work load and a personal surgery. (Ferguson Decl. ¶4). Registrant's counsel never contacted Petitioner's counsel via telephone or email prior to February 28, 2017 to set up the discovery conference. (Ferguson Decl. ¶5).

The day after February 28, 2017, March 1, 2017, instead of calling Petitioner's counsel, Registrant's counsel filed the instant Motion. (Ferguson Decl. ¶6). As soon as Petitioner's counsel received the instant Motion she sent an email to Registrant's counsel asking that the Motion be dismissed and that they set the discovery conference. (Ferguson Decl. ¶7). Registrant's counsel responded that he had to evaluate the situation and had not received Petitioner's email over the weekend. (Ferguson Decl. ¶8). Petitioner's counsel responded with and advised that the parties should still set the discovery conference and that the Motion should be dismissed and the case should move forward. (Ferguson Decl. ¶9). Registrant's counsel responded that he had a death in the family and that he would address the substantive issues later.

(Ferguson Decl. ¶10). Petitioner's counsel responded that she was sorry to hear that and that she would file the Opposition. Petitioner's counsel provided further offers for the discovery conference. (Ferguson Decl. ¶11). In light of this Petitioner's counsel has filed the instant Opposition.

II. REQUEST TO DENY MOTION FOR A DEFAULT JUDGMENT

Petitioner's counsel now files this Opposition to the Motion to request that the TTAB deny Registrant's Motion and allow this case to proceed. Petitioner's counsel is ready, willing and able to conduct the discovery conference at any time and move this case forward. In fact, Petitioner has asked for a date and time in the next two days to hold the discovery conference and Registrant has failed to provide a date. In light of the above facts Petitioner's counsel respectfully requests that this Motion be denied.

Respectfully submitted,
PROCOPIO, CORY, HARGREAVES &
SAVITCH LLP

DATED: March 3, 2017

By: /Lisel M. Ferguson/

Lisel M. Ferguson
Attorney for Petitioner

525 B Street, Suite 2200
San Diego, CA 92101
Tel: (619) 515-3207
Fax: (619) 235-0398
Email: docketing@procopio.com;
calendaring@procopio.com
Our Reference: 123338-CAN001

CERTIFICATE OF TRANSMISSION

I, Lisel M. Ferguson, hereby certify that the foregoing AMENDED OPPOSITION TO DEFENDANT’S MOTION FOR AN ORDER TO SHOW CAUSE RE DEFAULT JUDGMENT is being transmitted to the USPTO Trademark Trial and Appeal Board through ESTTA on March 3, 2017 for filing.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served on March 3, 2017 via U.S. First Class Mail to the Registrant’s attorney of record as follows:


THE KINDER LAW GROUP
Brian P. Kinder | Intellectual Property Law
19200 Von Karman Ave., Fourth Floor
Irvine, California 92612
bkinder@tklglaw.com

Attorney of Record / Correspondent for Registrant

Dated: March 3, 2017

By: /Lisel M. Ferguson/
Lisel M. Ferguson

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
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45

Cancellation For: Goods/Services in
International Class Nos. 9 and 42

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

AMENDED DECLARATION OF LISEL M. FERGUSON IN SUPPORT OF
AMENDED OPPOSITION TO DEFENDANT’S MOTION FOR AN ORDER TO SHOW
CAUSE RE DEFAULT JUDGMENT

I, Lisel M. Ferguson, declare as follows:

1. I am an attorney duly admitted to practice law in the State of California and am a partner with the law firm of Procopio, Cory, Hargreaves & Savitch LLP. I am the attorney of record for Petitioner LUV.IT Technologies Inc. (“LUV.IT”). Unless otherwise indicated, the statements made by me herein are made on personal knowledge and, if called as a witness, I would and

could competently testify to the truth thereof.

2. A few days before the deadline to conduct the discovery conference, over the weekend, I sent an email to Registrant's counsel, Brian Kinder, asking whether he could conduct the discovery conference on February 27th or 28th.

3. I did not receive a response from counsel and am now unable to find the email which was sent from my phone over the weekend on the 26th.

4. On February 27th and 28th I was extremely busy with my workload and also had to undergo a surgery on the 28th and therefore I failed to send a follow up email or call Registrant's counsel to further request a discovery conference date.

5. I did not receive an email from Registrant's counsel either prior to or after February 28th asking for a mutually agreeable time to set a discovery conference.

6. On March 1, 2017, the day after the TTAB's cut off for a discovery conference, I received Petitioner's Motion for an Order to Show Cause re Default Judgment ("Motion").

7. As soon as I received the Motion I sent an email to Registrant's counsel requesting that he dismiss the instant Motion and set a time for the discovery conference in the next day or two. (Email chain attached as Exhibit 1)

8. Registrant's counsel responded to my email stating that he did not receive any email over the weekend and that he had to evaluate the situation. Registrant's counsel did not agree to set aside the Motion or provide me with a date to conduct the discovery conference.

9. Petitioner sent another informing Registrant's counsel that she sent email while working remotely out of town and again requesting a date for the discovery conference.

10. Registrant's counsel responded that he had a death in the family and that he would address the substantive issues later. (Email chain attached as Exhibit 1)

11. Petitioner's counsel responded that she was sorry to hear that and that she would file the Opposition. Petitioner's counsel provided further offers for the discovery conference.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 3rd day of March, 2017 at San Diego, California.

/Lisel M. Ferguson/
Lisel M. Ferguson

CERTIFICATE OF TRANSMISSION

I, Lisel M. Ferguson, hereby certify that the foregoing AMENDED DECLARATION OF LISEL M. FERGUSON IN SUPPORT OF AMENDED OPPOSITION TO DEFENDANT’S MOTION FOR AN ORDER TO SHOW CAUSE RE DEFAULT JUDGMENT is being transmitted to the USPTO Trademark Trial and Appeal Board through ESTTA on March 3, 2017 for filing.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served on March 3, 2017 via U.S. First Class Mail to the Registrant’s attorney of record as follows:


THE KINDER LAW GROUP
Brian P. Kinder | Intellectual Property Law
19200 Von Karman Ave., Fourth Floor
Irvine, California 92612
bkinder@tklglaw.com

Attorney of Record / Correspondent for Registrant

Dated: March 3, 2017

By: /Lisel M. Ferguson/
Lisel M. Ferguson

EXHIBIT “1”

Fuger, Michele L.

From: Ferguson, Lisel M.
Sent: Thursday, March 02, 2017 8:47 AM
To: 'Brian Kinder'
Cc: Docketing; Calendaring Inbox; Fuger, Michele L.; Lawson, Pamela E.
Subject: RE: Cancellation Proceeding 92065031 - LOVE IT

Sorry to hear that.

I will file my Opposition today. I am ready to hold the discovery conference as soon as you are able. I am fairly open today the 2nd or tomorrow the 3rd just provide me with a time that will work for you.

LISEL M. FERGUSON

PARTNER
PROCOPIO

P. 619.515.3207 | F. 619.744.5407 | lisel.ferguson@procopio.com
525 B STREET, SUITE 2200, SAN DIEGO, CA 92101

[View Profile](#) | [LinkedIn](#) | procopio.com

From: Brian Kinder [<mailto:bkinder@tklglaw.com>]
Sent: Thursday, March 02, 2017 7:52 AM
To: Ferguson, Lisel M.
Cc: Docketing; Calendaring Inbox; Fuger, Michele L.; Lawson, Pamela E.
Subject: RE: Cancellation Proceeding 92065031 - LOVE IT

Lisel

I have had a death in the family and will be out of the office today. I will be returning tomorrow and will address the substance of your email at that time.

Brian Kinder

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: "Ferguson, Lisel M." <lisel.ferguson@procopio.com>
Date: 3/1/17 5:07 PM (GMT-08:00)
To: Brian Kinder <bkinder@tklglaw.com>
Cc: Docketing <Docketing@procopio.com>, Calendaring Inbox <calendaring@procopio.com>, "Fuger, Michele L." <michele.fuger@procopio.com>, "Lawson, Pamela E." <pamela.lawson@procopio.com>
Subject: Re: Cancellation Proceeding 92065031 - LOVE IT

Brian,

It was sent over the weekend from my phone. I don't know if I have or as I was working remotely out of town. Yesterday I had arm

surgery and now I am catching up. If you need to do a full investigation just to dismiss a Motion you filed a day after a deadline I will just file an Opposition tomorrow and the TTAB can see how ridiculous the Motion is. Please advise.

On a more substantive note are you available tomorrow March 2nd at 9 to 10:30 or 12-2 to conduct our Discovery Conference.

Sincerely,

Lisel

On Mar 1, 2017, at 3:06 PM, Brian Kinder <bkinder@tklglaw.com<<mailto:bkinder@tklglaw.com>>> wrote:

Lisel:

My apologies if you had sent emails to which I did not respond. I check my spam folder very carefully and I do not recall seeing anything from you or your office. Could you please forward me the emails that you had sent previously.

Once I see the emails, I will then be able to complete my evaluation of your request.

Thank you.

<image001.jpg>

Brian P. Kinder | Intellectual Property Law

19200 Von Karman, Fourth Floor

Irvine, California 92612

O: 949.216.3070 F: 949.216.3074

M: 562.673.4300 W: www.tklglaw.com<<http://www.tklglaw.com/>>

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From: Ferguson, Lisel M. [<mailto:lisel.ferguson@procopio.com>]

Sent: Wednesday, March 01, 2017 2:55 PM

To: Brian Kinder; Docketing; Calendaring Inbox

Cc: Fuger, Michele L.; Lawson, Pamela E.

Subject: RE: Cancellation Proceeding 92065031 - LOVE IT

Dear Brian,

I can't believe you filed a Motion without calling or emailing me to set the Discovery Conference first. I am available to conduct the discovery conference tomorrow morning if you would like as early as 9 a.m. I have sent you emails to which I have not received a response. Perhaps these emails were caught in your spam filter. I respectfully request that you withdraw your frivolous motion and provide me with your availability tomorrow and/or Friday to conduct a discovery conference.

Sincerely,

Lisel

LISEL M. FERGUSON

PARTNER

PROCOPIO

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View Profile<<http://www.procopio.com/attorneys/view/lisel-m-ferguson>> | LinkedIn<<https://www.linkedin.com/in/lisel-ferguson-0104137>> | [procopio.com](http://www.procopio.com)<<http://www.procopio.com/>>

From: Brian Kinder [<mailto:bkinder@tklglaw.com>]
Sent: Wednesday, March 01, 2017 12:32 PM
To: Ferguson, Lisel M.; Docketing; Calendaring Inbox
Subject: Cancellation Proceeding 92065031 - LOVE IT

Dear Lisel:

Please confirm receipt of the attached service copy.

Original has been sent via U.S. First Class Mail.

Thank you.

<image005.jpg>

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mailgw01.procopio.com<<http://mailgw01.procopio.com>> made the following annotations

Wed Mar 01 2017 14:54:58

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