

ESTTA Tracking number: **ESTTA829477**

Filing date: **06/27/2017**

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

Proceeding	92065911
Party	Defendant NERO World, LLC
Correspondence Address	JOVANNA R BEARDEN BEARDEN LAW 104 S MAIN STREET BUTLER, MO 64730 UNITED STATES Email: jovannabearden@gmail.com
Submission	Opposition/Response to Motion
Filer's Name	Jovanna R. Bearden
Filer's email	email@bearden.law
Signature	/Jovanna R. Bearden/
Date	06/27/2017
Attachments	Response to Petitioner Motion for Default.pdf(118145 bytes ) NERO.pdf(665033 bytes )

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

In the matter of trademark Registration No. 4657988, Serial No. 86280398  
For the mark NERO  
Registered on December 16, 2014

Joseph Valenti, )  
 )  
Plaintiff, )  
 ) Cancellation No. 92065911  
v. )  
 )  
NERO World, LLC, )  
 )  
Defendant, )  
 )

**DEFENDANT’S OPPOSITION TO PETITIONER’S MOTION FOR DEFAULT  
JUDGMENT**

COMES NOW Defendant, by and through Counsel, and opposes Petitioner’s Motion for  
Default Judgment as follows:

STATEMENT OF RELEVANT FACTS

On or about May 29, 2017, Defendant, through counsel, responded to Petitioner’s  
Opposition by filing a Motion to Dismiss with the ESTTA. By so doing, Defendant’s counsel  
believed that she had effectuated service by email on the Petitioner at its address for service,  
[Nerolitigation@gmail.com](mailto:Nerolitigation@gmail.com). Defendant’s counsel founded this belief based on the email she  
received, a copy of which is attached hereto as “Exhibit A”. This email used the language  
“Attachment” to describe the document that had just been filed, and Counsel was therefore under  
the impression that this document was attached to the email sent to Petitioner. Exhibit A,

Affidavit of Jovanna R. Bearden. Defendant's counsel made this error inadvertently, as this is the first case she has handled before the TTAB and was not seeking to prejudice the Petitioner, or obstruct the progression of this case in any way. Exhibit A.

### ARGUMENT

A defendant can overcome a default if it can demonstrate good cause for timely filing a response. Fed. R. Civ. P. 55(c). Good cause is found where 1- a defendant shows 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.

Plaintiff seeks to take Default Judgment against Defendant as a result of a good faith error made by Defendant's Counsel. Counsel filed a copy of Defendant's Motion to Dismiss with the TTAB through the ESTTA system, however, Defendant did not send a separate email containing a copy of this Motion to Dismiss to Petitioner. Exhibit A. This error was inadvertent, made in good faith and through excusable neglect. This is Defendant counsel's first case before the TTAB. Despite her effort to familiarize herself with the rules and procedures of this tribunal, she was unaware that the ESTTA system would not send a service copy of her Motion to Dismiss to Plaintiff. Exhibit A. Counsel primarily practices in Missouri State Court, where a receipt includes an attachment of the documents filed and is served on the opposing party. Exhibit A. Based on this experience and a misreading of the ESTTA filing receipt, Counsel inadvertently failed to send a service copy to Plaintiff. Exhibit A. Counsel was not attempting to prejudice or harm Plaintiff, or delay proceedings in this case. Exhibit A.

The Plaintiff has not been substantially prejudiced by Defendant's failure to serve a copy of the Motion to Dismiss on May 29, 2017. Plaintiff has received a copy of the Motion to Dismiss and has responded to said motion, despite the fact that Defendant did not get a service copy to Plaintiff on May 29, 2017. Because Plaintiff has received and responded to this Motion, there is no evidence of Prejudice against Plaintiff. Further, all deadlines were put on hold in this matter at the time the Motion to Dismiss was filed, therefore Plaintiff has not had any time shortened to respond to any deadlines and does not have any hardship in that regard.

Finally, where a Defendant can show a meritorious defense to an action, a Motion for Relief from a Default Judgment should be granted. *Djeredjian v. Kashi Co.*, 21 USPQ2d 1613, 1615 (TTAB 1991). In this case, Defendant can state a meritorious defense, as the Plaintiff lacks standing to pursue this matter. The law and facts supporting this defense are fully stated and argued in Defendant's Motion to Dismiss. Therefore, to conserve time and space, Defendant refers to and incorporates that Motion into this document.

#### CONCLUSION

Defendant's counsel failed to send the Motion to Dismiss in a separate email to Petitioner through inadvertence. As a result of Counsel's actions, Plaintiff has not been prejudiced, the action was not willful or intended to obstruct litigation in this matter, and Defendant has meritorious defenses. Therefore, Defendant prays for an Order denying Plaintiff's Motion for Default Judgment, and allowing the Motion to Dismiss to be considered served as Plaintiff has received and responded to the motion. In the alternative, Defendant asks for an Order allowing Defendant to file an Answer out of time in this matter.

Dated: June 27, 2017

By: / Jovanna R. Bearden /  
Jovanna R. Bearden MO#60294  
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Attorney for Defendant

CERTIFICATE OF SERVICE

I, Jovanna R. Bearden, certify that on this 27th day of June, 2017, a true and correct copy of the foregoing document was filed with the Trademark Trial and Appeal Board via the Electronic System for Trademark Trials and Appeals and sent by email to Counsel for Plaintiff, Phillip Thomas Horton at [NEROLitigation@gmail.com](mailto:NEROLitigation@gmail.com) .

Dated: June 27, 2017

By: / Jovanna R. Bearden /  
Jovanna R. Bearden

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

In the matter of trademark Registration No. 4657988, Serial No. 86280398  
For the mark NERO  
Registered on December 16, 2014

Joseph Valenti,	)	
	)	
Plaintiff,	)	
	)	Cancellation No. 92065911
v.	)	
	)	
NERO World, LLC,	)	
	)	
Defendant,	)	
	)	

**Affidavit of Jovanna R. Bearden**

I, Jovanna R. Bearden, being duly sworn, do state that the following statements are true and correct:

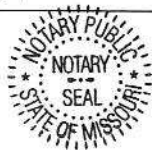
1. My name is Jovanna R. Bearden. I am the attorney for Defendant, NERO World, LLC in the above captioned case.
2. This is the first case that I have handled before the TTAB. Prior to filing any documents I did read the Procedure Manual and spent many hours trying to familiarize myself with the procedure for cases in this forum.
3. I conduct most of my legal work in Missouri State Court. Missouri's eFiling system attaches service copies of documents to email receipts and sends the same to all parties on the case by email.
4. On May 29, 2017, I filed with the ESTTA an Entry of Appearance and Motion to Dismiss in this case.

5. When I filed the documents, I began drafting an email with a service copy of the documents to Nerolitigation@gmail.com. However, in the process of drafting this email I received a receipt of filing from the ESTTA system. A true and accurate copy of this email is attached hereto.
6. The Receipt of filing indicated that the documents I had filed were "Attached". The Receipt also indicated that NeroLitigation@gmail.com also received a receipt. Based on this, and my experiences with Missouri's eFiling system, I was under the belief that there was a copy of the documents I had filed were attached and mailed to NeroLitigation@gmail.com.
7. Had I known that a service copy of these documents was not sent through the ESTTA email I would have sent over service copies immediately. However, I was not made aware of this, and I received no correspondence regarding the matter from Plaintiff's Counsel.
8. I did not act in a malicious or obstructive manner. I was simply attempting to avoid duplication of effort, numerous emails to Plaintiff's Counsel, and attempting to follow procedure with my first filings with the ESTTA to the best of my ability.
9. I was not attempting to obstruct litigation in this matter, or prejudice the Plaintiff in any way.

Date: 6/26/17  
Signed: Joanna R Bearden  
Print: Joanna R Bearden

Subscribed and sworn to before me, this 26<sup>th</sup> day of June, 2017.

Stacey Fox



STACEY FOX  
My Commission Expires  
June 4, 2018  
Bates County  
Commission #14396066

NOTARY PUBLIC

My commission expires: 6-4-18

June 26<sup>th</sup>, 2017.



Jovanna Bearden &lt;jovannabearden@gmail.com&gt;

**ESTTA. Motion to Dismiss - Rule 12(b) confirmation receipt ID: ESTTA823563**

1 message

estta-server@uspto.gov <estta-server@uspto.gov>  
To: NEROLitigation@gmail.com, jovannabearden@gmail.com

Mon, May 29, 2017 at 2:17 PM

Cancellation No.: 92065911

Tracking No: ESTTA823563

**ELECTRONIC SYSTEM FOR TRADEMARK TRIALS AND APPEALS Filing Receipt**

The Trademark Trial and Appeal Board (Board) has received a filing titled ELECTRONIC SYSTEM FOR TRADEMARK TRIALS AND APPEALS submitted through the Electronic System for Trademark Trials and Appeals (ESTTA). This Notice verifies receipt of the filing and includes an ESTTA Tracking Number.

Unless the filing fails to meet all applicable minimum legal requirements for filing, the Board will not retract the filing or refund any fees paid.

The filing, and any Board proceeding, may be viewed on TTABVUE at <http://ttabvue.uspto.gov>. Please allow up to two hours for the system to process this filing.

If the filer has a question, or if the filing is not viewable in TTABVUE, the TTAB Assistance Center is available at 571-272-8500, Monday to Friday from 8:30 a.m. to 5:00 p.m. Eastern Time (ET), or email at [estta@uspto.gov](mailto:estta@uspto.gov). Please provide your ESTTA Tracking No.

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ESTTA server at <http://estta.uspto.gov>

ESTTA Tracking number: ESTTA823563  
Filing date: 05/29/2017

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

Proceeding: 92065911  
Party: Defendant  
NERO World, LLC

Correspondence Address:  
NERO WORLD LLC  
21 BATTERY PARK AVENUE APT 302  
ASHEVILLE, NC 28801  
UNITED STATES

Submission: Motion to Dismiss - Rule 12(b)

Filer's Name: Jovanna R. Bearden  
Filer's e-mail: [jovannabearden@gmail.com](mailto:jovannabearden@gmail.com)  
Signature: /Jovanna R. Bearden/



6/20/2017

Gmail - ESTTA. Motion to Dismiss - Rule 12(b) confirmation receipt ID: ESTTA823563

Date: 05/29/2017

Attachments: Ford - MTD.pdf