

ESTTA Tracking number: **ESTTA1000310**

Filing date: **09/07/2019**

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

Proceeding	92071578
Party	Defendant We Sell Re Sell LLC
Correspondence Address	MORRIS E TUREK YOURTRADEMARKATTORNEY.COM 167 LAMP AND LANTERN VILLAGE #220 CHESTERFIELD, MO 63017-8208 UNITED STATES morris@yourtrademarkattorney.com 314-749-4059
Submission	Other Motions/Papers
Filer's Name	Morris E. Turek
Filer's email	morris@yourtrademarkattorney.com
Signature	/met20/
Date	09/07/2019
Attachments	We Sell Re Sell Motion to Set Aside Notice of Default.pdf(131597 bytes )

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

UT Vapes, LLC )  
Petitioner )  
v. ) Cancellation No. 92071578  
We Sell Re Sell LLC )  
Registrant )  
\_\_\_\_\_ )

**REGISTRANT’S MOTION TO SET ASIDE**  
**NOTICE OF DEFAULT**

Registrant We Sell Re Sell LLC (“Registrant”) hereby respectfully requests that the Board set aside its Notice of Default for good cause shown and to reset all dates in its Notice of Institution.

If a defendant who has failed to file a timely answer to the complaint responds to a notice of default by filing a satisfactory showing of good cause why default judgment should not be entered against it, the Board will set aside the notice of default. TMEP § 312.02. Good cause why default judgment should not be entered against a defendant, for failure to file a timely answer to the complaint, is usually found when the defendant shows that (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. *Id.* The showing of a meritorious defense does not require an evaluation of the merits of the case. *Id.* All that is required is a plausible response to the allegations in the complaint. *Id.*

In this case, Registrant's delay in filing an answer was not the result of willful conduct or gross neglect on the part of Registrant. Registrant was not living full-time at the address to which the Petition for Cancellation was mailed and did not receive actual notice of the Petition for Cancellation until August 11, 2019. Upon learning of the Petition for Cancellation, Registrant immediately took steps to seek counsel to represent it in the proceeding.

Moreover, Petitioner will not be substantially prejudiced by the delay since the cancellation proceeding is in its infancy and the delay in the proceeding should amount to no more than a couple of months.

Finally, Registrant has a meritorious defense to the cancellation in that Registrant has not abandoned the DAB LAB mark. In its Answer filed September 7, 2019, Registrant has denied all salient allegations and claims in the Petition for Cancellation.

In view of the above, Registrant respectfully requests that the Board set aside its Notice of Default for good cause shown and to reset all dates in its Notice of Institution.

Respectfully submitted,

WE SELL RE SELL LLC

By: \_\_\_\_\_ /met20/  
Morris E. Turek  
YourTrademarkAttorney.com  
167 Lamp and Lantern Village, #220  
Chesterfield, MO 63017-8208  
Tel: (314) 749-4059  
Fax: (800) 961-0363  
[morris@yourtrademarkattorney.com](mailto:morris@yourtrademarkattorney.com)

Dated: \_\_\_\_\_ 9/7/2019 \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing has been served by emailing said copy on 9/7/2019 to:

Arnold S. Weintraub  
Attorney for Petitioner  
[aweintraub@weintraubgroup.com](mailto:aweintraub@weintraubgroup.com)

/met20/  
Morris E. Turek, Attorney for Registrant