

ESTTA Tracking number: **ESTTA1026802**

Filing date: **01/06/2020**

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

Proceeding	92072535
Party	Defendant KBCO Distributors
Correspondence Address	KBCO DISTRIBUTORS 2541 S I H-35, STE 200-268 ROUND ROCK, TX 78664 UNITED STATES no email provided no phone number provided
Submission	Motion for Relief from entry of Default Judgment
Filer's Name	Michael L Bartholomew
Filer's email	mbartholomew@kba.law, lruiz-orellana@kba.law
Signature	/Michael L Bartholomew/
Date	01/06/2020
Attachments	2020-01-06_Motion_to_Set_Aside.pdf(34058 bytes )

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

<b>MAXWILL, LLC.,</b>  Petitioner,  v.  <b>KBCO DISTRIBUTORS,</b>  Registrant.	Cancellation No. 92072535  Mark: KICKFIX Int'l Class: 028 Serial No.: 88/097,587 Filed: August 29, 2018 Registered: June 4, 2019
--	--

**MOTION TO SET ASIDE NOTICE OF DEFAULT**

Registrant KBCO Distributors (“KBCO” or “Registrant”) hereby requests this Motion to Set Aside Notice of Default, pursuant to the requirements of Section 312.02 of the Trademark Trial and Appeal Board Manual of Procedure, and respectfully states the following:

1. Petitioner emailed the attorney of record for the trademark registration, Curt Handley, on October 2, 2019 a copy of the Petition for Cancellation. Petitioner filed the Petition for Cancellation on October 16, 2019.
2. Attorney Curt Handley did not inform Registrant of the Petition for Cancellation.
3. The TTAB mailed a copy of the Petition for Cancellation to Registrant on October 22, 2019 to the mailing address of record for the trademark registration: 2541 S I H-35, STE 200-268, Round Rock, TX 78664.
4. The TTAB mailed a copy of the Notice of Default to Registrant on December 11, 2019 to the mailing address of record for the trademark registration: 2541 S I H-35, STE 200-268, Round Rock, TX 78664.

5. On December 24, 2019, Registrant obtained the mail, from the address 2541 S I H-35, STE 200-268, Round Rock, TX 78664, and received the Petition for Cancellation and the Notice of Default.

6. The delay in filing an answer was not the result of willful conduct or gross neglect on the part of Registrant. An answer is filed concurrently with this Motion to Set Aside Notice of Default.

7. Registrant is unaware of any reason that Petitioner will be substantially prejudiced by the delay in filing an answer.

8. Registrant has a meritorious defense to the action as found in the answer filed concurrently with this Motion to Set Aside Notice of Default.

9. This motion is being made within 30 days of the Notice of Default.

10. Default judgment should not be entered against Registrant because: a) the delay in filing an answer was not the result of willful conduct or gross neglect on the part of Registrant; b) Petitioner will not be substantially prejudiced by the delay; and c) Registrant has a meritorious defense to the action.

WHEREFORE, Registrant KBCO Distributors moves to set aside the notice of default entered against Registrant.

Dated: January 6, 2020

Respectfully Submitted,

By: /Michael L. Bartholomew/

Michael L. Bartholomew

**KUNZLER BEAN & ADAMSON, PC**

50 W. Broadway, Suite 1000

Salt Lake City, UT 84101

Tel: (801) 994-4646

Fax: (801) 531-1929

mbartholomew@kba.law

*Attorneys for Registrant,*

*KBCO Distributors*

I hereby certify that on January 6, 2020, I filed the foregoing MOTION TO SET ASIDE NOTICE OF DEFAULT via the TTAB's ESTTA electronic filing system which effectuated service on all counsel of record. A copy of the foregoing has also been electronically served on Petitioner's counsel of record by email as of the same date as follows:

Kimberly Korn – [kimberlykornesq@aol.com](mailto:kimberlykornesq@aol.com)

/Michael L. Bartholomew/

Michael L. Bartholomew