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

Proceeding	92074501
Party	Plaintiff Foreign Language Department Co., D/B/A Language Learning Network
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Date	11/07/2020
Attachments	TTAB_Opposition to Motion to Vacate_11.07.2020.pdf(908573 bytes)

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

In the Matter of Registration No. 5852126
Mark: LLN

FOREIGN LANGUAGE DEPARTMENT CO. D/B/A LANGUAGE LEARNING NETWORK, Petitioner, v. LLN, INC., Respondent.	)	Cancellation No. 92074501

PETITIONER'S OPPOSITION TO RESPONDENT'S
MOTION TO VACATE DEFAULT JUDGMENT AND REINSTATE ACTION

Petitioner, Foreign Language Department Co., D/B/A Language Learning Network (hereafter "Petitioner") thorough its counsel, submits this opposition to Respondent LLN, Inc.'s (hereafter "Respondent") Motion to Vacate Default Judgment and Reinstate Action (hereafter "Respondent's Motion"). Respondent's Motion should be denied because (1) Respondent failed to apply the correct standard of review under the Federal Rules of Civil Procedure (hereafter "FRCP") and the Trademark Trial and Appeal Board Manual of Procedure (hereafter "TBMP"); (2) Respondent's inexcusable neglect bars the relief it seeks; and (3) even in the absence of Respondent's misconduct, Respondent has failed to demonstrate: (a) that it has a meritorious defense; and (b) that Petitioner would not be prejudiced by vacation of this judgment.

ARGUMENT

Respondent cites FRCP 55(c) and 60(b) to support its motion to vacate the underlying default judgment in this matter. However, Respondent conflates their distinct standards of review, and as a result, Respondent's argument is legally inaccurate. Had Respondent applied the correct standard of review required by FRCP 60(b) (*see* TBMP 312.03), its claim for relief would fail because Respondent cannot show that its neglect to file a timely response is excusable. Respondent's Motion additionally fails to show that its underlying claim would be meritorious, and that Petitioner would not be prejudiced by vacating this judgment.

1. FRCP 55(c) vs 60(b)

FRCP 55(c) provides relief for setting aside a notice of default in an effort to *prevent* an entry of default. "A notice of default may be set aside on a showing of good cause." *See* Fed. R. Civ. P. 55(c). ***However, once a default judgment has already been entered against a defendant, the judgment may be set aside only in accordance with FRCP 60(b)***. That is to say, once a default judgment has been entered, relief pursuant to FRCP 55(c) is no longer available.

Here, the Notice of Default was issued on August 6, 2020, which was six (6) days after the Respondent's Answer was due. The Notice of Default suspended the proceedings and provided an additional thirty (30) days within which Respondent could offer evidence to justify its failure to timely respond. It was at ***this*** point that Respondent had the opportunity to file a motion to set aside the default upon a showing of "good cause" pursuant to FRCP 55(c) and TBMP 312.02.

At the end of the 30-day period, however, Respondent had still not filed an answer. The Board then waited an ***additional*** twenty (20) days thereafter before entering the default judgment against Respondent on September 25, 2020. Thus, Respondent effectively had fifty (50) days (i.e.,

almost double the amount of time) within which it could have filed a motion to prevent the entry of default judgment under FRCP 55(c).

Instead, Respondent waited until October 15, 2020 to file its first and only response, which was seventy (70) days after the Board issued a notice of default, and twenty (20) days after the default judgment was entered. At this point, Respondent's only option for relief was a motion to vacate pursuant to FRCP 60(b) (*see* TBMP 312.03). Relief from a final judgment under Rule 60(b) is an extraordinary remedy to be granted only in exceptional circumstances. *Djeredjian v. Kashi Co.,* 21 USPQ2d 1613, 1615 (TTAB 1991).

Although many of the same ***factors*** considered in a motion to set aside a notice of default under FRCP 55(c) are <u>*also*</u> considered in a motion to vacate a default judgment under FRCP 60(b), the methodology for considering these factors and the weight accorded to them are dramatically distinct. *Waifersong Ltd. V. Classic Music Vending,* 976 F.2d 290, 24 USPQ2d 1632, 1634 (6th Cir. 1992). Respondent claims that its motion should be reviewed based on a balancing of the following three factors:

1) **Whether Respondent's default was willful;**
2) **Whether Petitioner will be prejudiced by a decision to vacate; and**
3) **Whether Respondent has a meritorious defense to the action.**

(*see* Respondent's Motion at 2).

While a "balancing test" of these three factors may be considered in determining whether to set aside an entry of default under FRCP 55(c), "***balancing is demonstrably inappropriate under Rule 60(b)(1)" because the rule mandates that Respondent cannot be relieved of a default judgment unless he can show that his default was the product of mistake, inadvertence, surprise, or excusable neglect.*** *See* Fed. R. Civ. P. 60(b)(1). It is only upon carrying this burden that Respondent will be permitted to demonstrate that it can also satisfy the other two factors: the

existence of a meritorious defense; and the absence of substantial prejudice to the Petitioner should relief be granted. *Waifersong,* 976 F.2d at 292.

2. Respondent Failed to Satisfy Rule 60(b)(1)

Respondent argues that its motion should be granted because Respondent's failure to file a timely response "was not willful." Respondent effectively seeks to apply the more lenient standard of review under FRCP 55(c), which considers culpability in the general context of whether equitable relief is deserved. *Id.* Determining a motion to vacate under FRCP 55(c) would ***only*** be applicable had Respondent filed **before** the default judgment was ***entered*** (i.e., before September 25, 2020). Respondent, however, filed its motion on October 15, 2020 – ***after*** entry of the default judgment. Therefore, Respondent's Motion must be determined by the stricter standard of FRCP 60(b), which can only be met by a showing of: "mistake, inadvertence, surprise, or excusable neglect." *See* Fed. R. Civ. P. 60(b)(1).

Respondent claims that its failure to file a timely response in this matter is excusable because it was not "willful." Respondent does ***not*** allege that its default was the product of mistake, inadvertence, surprise, or excusable neglect, however Respondent does cite several cognizable excuses: (1) the COVID-19 pandemic caused disruptions in receipt of mail through the United States Postal Service (hereafter "USPS"); (2) Respondent's counsel experienced personal and professional issues that adversely affected his work performance; and (3) the COVID-19 pandemic caused major disruptions. Each of these is addressed in turn below.

a) Respondent's Disruptions in Mail

Respondent claims that the COVID-19 pandemic shut down its office building on March 11, 2020, and as a result, Respondent did not receive any paper mail for its business until approximately mid-September (*see* "Declaration of Christian Crosby" Respondent's Motion,

Exhibit A). Respondent's issues with USPS are irrelevant because all documents and communications in this proceeding were sent electronically by the United States Patent and Trademark Office (hereafter "USPTO").

On July 31, 2019, the USPTO issued a rule requiring trademark owners to have and maintain a valid email address on file with the agency because the USPTO would be transitioning to mandatory electronic filing and email correspondence – which went into effect on February 15, 2020. *See* Changes to the Trademark Rules of Practice to Mandate Electronic Filing, 84 FR 37081; USPTO Examination Guide 1-20; *See also* 37 C.F.R. §§ 2.21(a)(1), 2.23(b), 2.32(a)(2), and 7.4(b). Therefore, none of the correspondence sent to Respondent by the USPTO would have come via USPS because it was sent by email.

Respondent's counsel in this dispute, Jonathan Berger, is also the attorney of record and e-mail contact (jberger@llbl.com) on Respondent's trademark registration. Mr. Berger used this same email address to contact Petitioner's counsel on September 30, 2020 and October 15, 2020 (*see* emails attached hereto as Exhibit A). It is also the email under which Respondent's Motion was filed (*see* Respondent's tracking page attached hereto as Exhibit B). Respondent makes no allegations regarding a disruption in Mr. Berger's email service between June 16, 2020 and September 30, 2020. As such, all of the communications from the USPTO in this matter were presumably sent directly to (and thus, should have been received by) Mr. Berger's email. Moreover, if an email transmission fails for any reason, the USPTO will ***not*** attempt to contact the correspondent by any other means. *See* 37 C.F.R. § 2.32(b), (d); USPTO, Trademark Manual of Examining Procedure (TMEP) § 403. Thus, any allegations of failure to receive USPS mail is categorically irrelevant.

The USPTO additionally requires *a separate email address* for all applicants, registrants, and petitioners so that the agency can contact them if legal representation ends. *See* 37 C.F.R. § 2.32(a)(2). However, in the event representation ends, the USPTO will ***not*** remove the attorney's information and ***will continue to send courtesy reminders for maintenance filings to only the attorney of record until a change of correspondence or revocation and new power of attorney is submitted***. *See* TMEP § 304.03. It is incumbent upon both registrants and their attorneys to maintain the accuracy of the information they provide to the USPTO. A party's failure to update their own contact information is not an excusable form of neglect under Rule 60(b)(1). *See Yeschick v. Mineta*, 675 F.3d 622 (6th Cir.2012); *Jabali v. Mau,* CV No. 08-00059 JMS/LEK, 2009 WL 1649735, *3 (D. Haw. June 9, 2009).

b) Counsel's Personal and Professional Issues

Respondent's Motion also attaches an affidavit signed by Mr. Berger containing information relating to issues in Mr. Berger's personal and professional life, including the death of Mr. Berger's father, a law firm merger, and the loss of a paralegal. (*see* "Declaration of Jonathan Berger" Respondent's Motion, Exhibit B). Respondent, however, fails to connect these alleged facts to any kind of cogent legal argument in support of its motion. Instead, Respondent claims that it "did not come close to willful neglect" when it failed to timely file an answer in this proceeding because Respondent "did not freely disregard court deadlines and rules." (Respondent's Motion at 5). "Willful neglect" is not the correct legal standard by which a motion to vacate a default judgment is determined.

As discussed, *supra*, a motion under FRCP 60(b) was the only mechanism of relief available to Respondent at the time of its submission. Pursuant to Rule 60(b)(1), a party will not be entitled to reopen the time for taking action after a default judgment is entered unless that party can show

that its neglect is "excusable." *See* Fed. R. Civ. P. 60(b)(1); *see also Pumpkin Ltd. v. The Seed Corps,* 43 USPQ2d 1582 (TTAB 1997). An absence of intent or willingness does not make neglect excusable. The review under 60(b) establishes a "high hurdle" and requires "something more compelling than ordinary lapses of diligence or simple neglect to justify disturbing a default judgment." *Jones v. Phipps*, 39 F.3d 158, 162 (7th Cir. 1994); *see also Oku v. Oyster Gaston5, LLC,* No. 19-C-7673, 2020 WL 5763644 (N.D. Ill. Sept. 28, 2020). ***An attorney's carelessness and lack of diligence and attention to their client does not constitute excusable neglect*** under Rule 60(b). *Marriott Corp. v. Pappy's Enterprises, Inc.*, 192 USPQ 735, 736 (TTAB 1976); *see also Martella v. Marine Cooks Stewards Union,* 448 F.2d 729 (9th Cir. 1971); *Chrysler Credit Corp. v. Macino*, 710 F.2d 363, 368 (7th Cir. 1983); *Engleson v. Burlington Northern R.R. Co.,* 972 F.2d 1038, 1043 (9th Cir. 1992) ("neither carelessness nor ignorance, ascribed to the party or party's attorney, may supply grounds for relief under 60(b).").

Mr. Berger has been practicing law for 21 years and holds himself out to be a skilled and experienced intellectual property attorney in New York. (*see* Exhibit C). Mr. Berger has not provided any justification for his failure to adequately prepare for the USPTO's transition to electronic filing and e-mail correspondence. This rule was first proposed by the USPTO over five (5) years ago[1] and has been a highly publicized and controversial issue in the trademark community.[2] Mr. Berger therefore had over five (5) years to learn of and prepare for this transition. There is no excuse for this level of carelessness. Mr. Berger's ability to competently practice law cannot be dependent on whether or not he has a paralegal. An attorney's "blaming of an associate

[1] *See Miscellaneous Changes to Trademark Trial and Appeal Board Rules of Practice; Proposed Rules*, Federal Register, Volume 81, No. 64 (Monday, April 4, 2016), pages 19295-19324, FR Doc No: 2016-06672.

[2] *See IP Alert: New USPTO Requirements Mandate a Valid Direct Owner Email Address; Privacy Concerns Raised*, Lathrop GPM (Feb. 12, 2020), *available at*: https://www.lathropgpm.com/newsletter-72486.html

or paralegal for his failure to track his client's case does not constitute excusable neglect." *See Hill v. World Class Automotive Corp.,* No. 06-CV-2496, 2008 WL 4809445, at *4 (E.D.N.Y. Nov. 4, 2008).

As a seasoned trademark attorney, Mr. Berger should also know that USPTO counsel of record remains of record and is responsible for safeguarding the client's interests unless counsel seeks, and is granted, leave to withdraw.[3] Furthermore, as a licensed attorney and member of the New York State Bar, Mr. Berger has a duty to promptly inform clients of any legal communications he receives on their behalf and to not neglect any legal matters entrusted to him. *See* N.Y. Rules of Prof'l Conduct R. 1.3(b); 1.4(a)(1), (3), (5); and 1.4(b).

It is unfortunate that Mr. Berger lost his father, however, Respondent has failed to show how this personal loss or any of Mr. Berger's professional challenges could not have otherwise been overcome by the exercise of reasonable diligence and care, which is expected of Mr. Berger as a licensed attorney. If anything, Mr. Berger's affidavit tends to show that Respondent's ability to timely respond was very much in his control and was thus, ***in***-excusable.

Respondent is also independently accountable for its own choices and inaction. "At the very least, a party must demonstrate his own diligence, even where the attorney commits gross misconduct." *See In re Bloomer*, 522 B.R. 897 (Bankr. S.D. Fla. 2016) (citing SEC v. Simmons, 241 Fed.Appx. 660, 664 (11th Cir. 2007)). Respondent has failed to show that it made any effort to safeguard the interests of its trademark. As discussed, *supra*, a party's failure to update contact information is not a form of excusable neglect under Rule 60(b). *See Yeschick v. Mineta*, 675 F.3d 622. Furthermore, when a client freely selects his attorney, he must suffer any consequences that

[3] Gerard Rogers, Ellen Seeherman & Cheryl Butler, *Inter Partes Proceedings at the TTAB: Advanced Practice Tips* (Sept. 2015), *available at:* http://cdn2.hubspot.net/hubfs/454850/1._John_Welch_Images/TTAB_Advanced_Practice_Tips.pdf

results from that agency relationship. *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380 (1993). "An attorney's actions, whether arising from neglect, carelessness or inexperience, are attributable to the client, who has a duty to protect his own interests." *Hill*, 2008 WL 4809445 at *4.

If Respondent feels that Mr. Berger is responsible for the entry of this default judgment, Respondent's remedy is against Mr. Berger in a suit for malpractice. Petitioner should not be penalized for the omissions of Respondent and its attorney. *See Link v. Wabash R. Co.,* 370 U.S. 626, (1962).

c) COVID-19

Respondent's Motion also makes several references to the COVID-19 pandemic and its "major disruptions." (Respondent's Motion at 3), but aside from its argument regarding untimely receipt of USPS mail (which, as shown above, is irrelevant to this dispute), Respondent otherwise fails to demonstrate ***how*** COVID-19 ***specifically affected Respondent*** such that it created a justifiable excuse to account for Respondent's failure to monitor its own trademark. Respondent instead attempts to shift its burden to Petitioner by suggesting that the Board's entry of default judgment in this proceeding was somehow a result of Petitioner's efforts to "reap the benefits" of the pandemic. (Respondent's Motion at 3). The COVID-19 pandemic has been in full force for almost a year and unfortunately, seems to have no end in sight. TTAB filing statistics, however, have shown that the pandemic has not had a substantial impact on U.S. trademark opposition and

cancellation filings.[4] In fact, as of September 9, 2020, year-to-date trademark cancellations were up by 2.5% from 2019.[5]

Respondent's CEO, Christian Crosby, is an accomplished media personality and NBA Arena Host for the Philadelphia 76ers.[6] While this petition was pending, Mr. Crosby was writing and producing music and using various social media platforms to promote paid sponsorships.[7] In a public interview earlier this year, Mr. Crosby acknowledged that he is "one of few who are blessed enough to be able to maintain" his lifestyle during the quarantine and COVID-19 pandemic. He went on to say that "being in the house is giving me more time to think. Not only about life, and about what I love to do and want to do in the future, but it's giving me more time to be creative."[8] Mr. Crosby released his first debut single and music video on or around June 20, 2020 – 4 days after the petition in this matter was filed.[9]

Respondent has not provided a single excusable reason to justify its complete failure to protect the interests of its trademark. The COVID-19 pandemic is a global health crisis that has affected *everyone*; no one is immune to its disruptions. However, the mere existence of the pandemic is not

[4] *See TTAB Incoming Filings and Performance Measures for Decisions*, Fiscal Year 2020, United States Patent and Trademark Office, Trademark Trial and Appeal Board, *available at:* https://www.uspto.gov/trademarks-application-process/appealing-trademark-decisions/ttab-incoming-filings-and-performance

[5] James Hastings, *U.S. Trademark Opposition Statistics During COVID-19*, Collen IP (Sept. 9, 2020), *available at*: https://www.trademarklitigationguide.com/

[6] Chase Freezman, *Christian Crosby Q&A: Sixers Arena Host Taps into Fans, Music, and Experience to Power through the Pandemic*, The Philadelphia Inquirer (July 10, 2020), *available at* https://inquirer.com/sports/sixers-arena-host-christian-crosby-taps-into-music-pandemic-20200710.html

[7] *See* @ChristianCrosby, Twitter (Sept. 18, 2020; July 15, 2020; July 7, 2020; June 27, 2020; June 20, 2020), https://twitter.com/ChristianCrosby

[8] Steve Lipman, *Exclusive Interview with Sixers In-Arena Host Christian Crosby*, SB Nation NBA (Apr. 27, 2020), *available at*: https://www.libertyballers.com/2020/4/27/21230970/interview-with-christian-crosby

[9] Ayden, Morris, *Christian Crosby Releases His Debut Single "Insecure" Along with Video*, DailyGerm (June 20, 2020), *available at* https://dailygerm.com/2020/06/20/christian-crosby-releases-his-debut-single-insecure-along-with-video/

a cart blanche "get-out-of-jail-free card" to be used to avoid accountability. Similarly, Rule 60(b) cannot be used to relieve a party from the duty to take legal steps to protect his interests. *John E. Smith's Sons Co. v. Lattimer Foundry & Mach. Co.,* 19 F.R.D. 379 (M.D. Pa.), aff'd, 239 F.2d 815 (3rd Cir.1956).

3. Respondent Failed to Show Additional Factors Under FRCP 60(b)

When a default judgment is entered against a party who cannot show that their neglect to timely file was excusable, further demonstration of the existence of a meritorious defense and/or lack of prejudice will not assist a Rule 60(b) claim because **all** three factors must be met. *Waifersong, Ltd. Inc. v. Classic Music Vending,* 976 F.2d 290, 24 USPQ2d 1632, 1634 (6th Cir. 1992). Nevertheless, Petitioner addresses each of these issues below to show that Respondent has failed to prove any of the factors required by FRCP 60(b).

a) Failure to Demonstrate Meritorious Defense

Rule 60(b) requires a movant to show that it has a meritorious defense to ensure that granting relief would not, in the end, be a futile gesture. *Ebersole v. Kline-Perry,* 292 F.R.D. 316 (E.D.Va.2013). A meritorious defense must have more than mere allegations that a defense exists. *Gomes v. Williams,* 420 F.2d 1364 (10th Cir. 1970). The defaulting party must present or proffer evidence, which, if believed, would permit a court to find for the moving party. *Id.* at 1366. "A bald allegation, without the support of facts underlying the defense, will not sustain the burden of the defaulting party under Rule 60(b)." *Id.*

Respondent's showing of a "meritorious defense" consists of the following five statements:

1. Petitioner fails to state a claim upon which relief can be granted;
2. Petitioner's allegations are barred by the equitable doctrines of waiver, acquiescence, and/or unclean hands;

3. Petitioner lacks standing to assert its claims;
4. Petitioner failed to show use of the alleged LLN mark in commerce; and
5. Respondent has greater rights to its LLN registered mark based on its earlier use of its LLN trademark/service mark and in part due to tacking.

(Respondent's Motion, Exhibit 5, "Proposed Answer to Petition to Cancel"). These five statements are the epitome of "bald allegations." After four months, Respondent files this motion seeking relief from its own negligence yet fails to make an effort to provide even a single fact to substantiate these "meritorious defenses."

b) Plaintiff would be Prejudiced by Vacation

The Board administers Rule 60(b) "with a scrupulous regard for the aims of finality." *Jack Lenor Larsen Inc. v. Chas. O. Larson Co.*, 44 USPQ2d 1950, 1952-54 (TTAB 1997). A significant factor in a Rule 60(b) determination is "the hardship that reopening a judgment may cause to others and whether other actions have been taken in reliance on the judgment." *Id.* At *2. Respondent asserts that Petitioner would not be prejudiced by vacation of this default judgment because:

1. Respondent is not aware of any pertinent actions or facts that have arisen that would prejudice Petitioner;
2. Petitioner's use-based trademark application fails to show use of the mark in commerce; and
3. Respondent should not reap the benefits of the COVID-19 pandemic.

(Respondent's Motion at 2-3).

Petitioner is a small business run by Sean Kreyling, who has no background in law or intellectual property. Mr. Kreyling filed this petition *pro se* and is now represented by a legal aid attorney because he does not have the financial resources to pay for a private trademark attorney.

Mr. Kreyling initiated this petition in June after discovering that Respondent had claimed ownership of a mark that Petitioner was first to use. This petition was not filed in an effort to "reap the benefits of COVID-19." On the contrary, this decision was made after careful deliberation because of the significant financial investment required to initiate the filing ($1,200). Mr. Kreyling ultimately committed to this because he knew it was a necessary step in acquiring his rights to the LLN mark. Mr. Kreyling did not even conceive of the idea that Respondent would fail to answer the petition and that the proceeding could potentially end in a default judgment.

Furthermore, the impetus to all of this was Petitioner's grave concerns about *another* new LLN – "Language Learning with Netflix" – which began to overtake all of Petitioner's arduous SEO and marketing efforts for Petitioner's "Language Learning Network." ***Respondent's*** LLN was an unanticipated obstacle in this process. Petitioner waited more than thirty (30) days after the notice of default was issued before even attempting to submit a new trademark application because it could not afford to gamble on yet another financial investment.

The allegations made by Respondent regarding the relative prejudice to Petitioner are grossly inaccurate. Petitioner's business has been in serious financial constraints as a result of the pandemic – a problem that Respondent seems to have had the luxury of avoiding. Petitioner relied on the finality of this default judgment and made financial decisions knowing that he no longer had to worry about the expenses of litigating this petition. If Respondent's Motion is granted, Petitioner will have lost the money it invested in its trademark application and have no resources to even defend itself because the money Petitioner had reserved for this proceeding has now been re-allocated.

CONCLUSION

To this date, Respondent has failed to add its email address or update the contact information on its registration. Petitioner, on the other hand, has been responsible, conscientious, and deliberate through every step of this process. It would be a gross abuse of power for the Board to grant Respondent's motion to vacate the default judgment in this proceeding. Respondent should not be rewarded for its carelessness and indifference to the integrity of this process and to the Federal Rules of Civil Procedure. A legal aid attorney representing a struggling small business should not have to explain trademark law to an intellectual property attorney and his celebrity client. Granting this motion would set a dangerous precedent that would have a chilling effect on all future proceedings. Petitioner accordingly requests that the Board deny Respondent's Motion and reenter the final default judgment in this matter.

Respectfully submitted,

Date: November 7, 2020

Melissa J. Hordichuk
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CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2020 the foregoing Opposition to Respondent's Motion to Vacate Default Judgment, and its corresponding exhibits, was sent by email to the Respondent's attorney, Jonathan Berger, at: jberger@llbl.com

Respectfully submitted,

Date: November 7, 2020

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EXHIBIT A

Melissa Hordichuk <melissa.hordichuk@accessjustice.org>

Cancellation No. 92074501 - Foreign Language Department Co., D/B/A Language Learning Net□ ork □. LLN, Inc. - Registration No. 5852126

Jonathan Berger

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Access to Justice Project

Melissa Hordichuk <melissa.hordichuk@accessjustice.org>

Proceeding No.: 92074501

Jonathan Berger

9 attachments

- **CERTIFICATE OF SERVICE.pdf**
- **Declaration of Christian Crosb .pdf**
- **E hibit 4 Petitioner T rademark Application.pdf**
- **E hibit 5 - Proposed Ans er .pdf**
- **Declaration Jonathan Berger.pdf**
- **E hibit 1 - Notification.pdf**
- **E hibit 2 - Emails Bounce Back .pdf**
- **E hibit 3 -Petition.pdf**
- **Motion to Vacate Default Judgment.pdf**

EXHIBIT B

ESTTA Tracking number: **ESTTA1088922**

Filing date: **10/15/2020**

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

Proceeding	92074501
Party	Defendant LLN, Inc.
Correspondence Address	LLN INC 9 LEGENDS LANE CAMDEN, NJ 08103 UNITED STATES No email provided. No phone number provided.
Submission	Motion for Relief from entry of Default Judgment
Filer's Name	Jonathan Berger
Filer's email	jberger@llbl.com, wruggiera@llbl.com
Signature	/Jonathan Berger/
Date	10/15/2020
Attachments	Motion to Vacate Default Judgment.pdf(57994 bytes) Declaration of Christian Crosby.pdf(1517604 bytes) Declaration Jonathan Berger.pdf(93274 bytes) Exhibit 1 - Notification.pdf(285511 bytes) Exhibit 2 - Emails Bounce Back .pdf(339443 bytes) Exhibit 3 -Petition.pdf(892457 bytes) Exhibit 4 Petitioner Trademark Application.pdf(303772 bytes) Exhibit 5 - Proposed Answer.pdf(137275 bytes) CERTIFICATE OF SERVICE.pdf(50716 bytes)

EXHIBIT C

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