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

Proceeding	92075231
Party	Defendant Jared Brubaker
Correspondence Address	BRIAN M DAVIS VLP LAW GROUP LLP 5960 FAIRVIEW RD; SUITE 400 CHARLOTTE, NC 28210 UNITED STATES Primary Email: bdavis@vlplawgroup.com 650-776-6530
Submission	Motion for Relief from entry of Default Judgment
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Date	04/22/2021
Attachments	MOTION TO SET ASIDE DEFFAULT JUDGMENT - BRUBAKER LAW.pdf(102918 bytes)

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

Michael C. Brubaker)	
)	
Petitioner,)	Cancellation No. 92075231
v.)	
)	
Jared Brubaker)	
)	
<u>Registrant</u>)	

REGISTRANT’S MOTION TO SET ASIDE NOTICE OF DEFAULT

Jared Brubaker (“Registrant”) respectfully submits the instant Motion to Set Aside Default pursuant to TBMP § 312.02 and with good cause shown respectfully requests that the Board set aside the Notice of Default and accept the Answer in this matter. In support thereof Registrant states as follows:

HISTORY OF THE PROCEEDING

1. On September 16, 2020, Michael C. Brubaker (“Petitioner”) instituted the present Cancellation Proceeding.

2. On September 28, 2020, Registrant filed a Motion to Dismiss the Petition to Cancel for failure to state a claim on which relief could be granted.

3. Registrant’s Motion to Dismiss was granted in a Trademark Trial and Appeal Board order dated January 28, 2021.

4. On February 24, 2021, Petitioner filed an Amended Petition to Cancel.

5. Due to a docketing error, Registrant did not file an Answer to the Amended Petition to Cancel by the deadline set out in the January 28, 2021 TTAB Order.

6. The Board subsequently issued the Notice of Default at issue herein.

RESPONSE

Good cause why default judgment should not be entered against a defendant, for failure to file a timely answer, is usually found when the defendant shows that (1) the delay in filing 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. TBMP § 312.02.

The determination of whether default judgment should be entered against a party lies within the sound discretion of the Board. In exercising that discretion, the Board must be mindful of the fact that it is the policy of the law to decide cases on their merits. Accordingly, the Board is very reluctant to enter a default judgment for failure to file timely, and tends to resolve any doubt on the matter in favor of the defendant. TBMP § 312.02.

In the instant case Registrant inadvertently lost track of the deadline to file its Answer and was not aware that the same had passed until the default notice. As such, it is submitted that good cause be established in this matter as to why the default should be set aside on the basis of Registrant's inadvertent lapse in not having the Answer filed in a timely manner.

It is respectfully submitted that the instant oversight was not as a result of willful conduct or gross neglect on the part of the Registrant but rather a calendaring error. Moreover, it is submitted that the Petitioner would not be prejudiced whatsoever by the instant setting aside of the default at issue as the simple delay at issue is not sufficient to warrant a finding of prejudice in this regard.

In regard to a meritorious defense, for the purposes of completeness Registrant has attached its Answer setting forth its defenses in the instant matter which it moves the Board to accept as late given the good cause shown herein.

WHEREFORE for good cause considered, Registrant respectfully requests that the Board accept the attached Answer in this matter.

Registrant - Jared Brubaker

/Brian M. Davis/
Brian M. Davis
VLP Law Group LLP
Attorney for Registrant

Date: April 22, 2021

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this **MOTION TO SET ASIDE NOTICE OF DEFAULT** was filed electronically with the Trademark Trial and Appeal Board on April 22, 2021.

VLP LAW GROUP LLP

/Brian M. Davis/
Brian M. Davis
VLP Law Group LLP
Attorney for Registrant
Date of Signature: April 22, 2021

CERTIFICATE OF SERVICE VIA ELECTRONIC MAIL

I hereby certify that a full and complete copy of this **MOTION TO SET ASIDE NOTICE OF DEFAULT** was sent to Petitioner (Michael C. Brubaker) at the email address of record for the proceeding (michael@brubakerlawgroup.com) on April 22, 2021.

/Brian M. Davis/
Brian M. Davis
VLP Law Group LLP
Attorney for Registrant
Date of Signature: April 22, 2021