

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
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June 14, 2021

Cancellation No. 92076849

*Public Storage*

*v.*

*Glenborough, LLC*

**Jill M. McCormack, Interlocutory Attorney:**

On April 7, 2021, Petitioner filed a petition for partial cancellation of Respondent's Registrations Nos. 2434540 and 2557602 under Section 18 of the Trademark Act, 15 U.S.C. § 1068. (1 TTABVUE). On May 12, 2021, in lieu of an answer, Respondent filed a Statement of Non-Opposition to Amendments to Respondent's Services Descriptions in the Registrations. (4 TTABVUE).

As an initial matter, Respondent's May 12, 2021 submission was not served. Trademark Rule 2.119(a) states that every submission filed in an inter partes proceeding must be served upon the other party or parties, and proof of such service must be made before the submission will be considered. 37 C.F.R. § 2.119(a); *see* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 113.02 (2020). The Board may decline to read or consider any future submission filed by Respondent in this proceeding which does not include proof of service. The Board informed the parties of the rules governing service and the service requirement in the

notice of institution. (2 TTABVUE 2). Trademark Rule 2.119(b) sets forth the manner of service. 37 C.F.R. § 2.119(b); *see also* TBMP § 113.04. At this time, in order to expedite matters, and because the interests of the parties would be served thereby, the Board serves, along with this order, a copy of the submission that does not include proof of service.<sup>1</sup> Also, the submission may be accessed via TTABVUE at: <http://ttabvue.uspto.gov/ttabvue/>.

In addition, the Board construes Respondent's May 12, 2021 submission as its consent to entry of judgment against Respondent as to Petitioner's proposed restrictions under Section 18, i.e., the restriction of "public storage" to "self-storage" in the recitation of services for International Class 36 of Registration Nos. 2434540 and 2557602. *See, e.g.*, TBMP § 604. Because of the dispositive nature of a consent to entry of judgment, to the extent that Respondent instead intended its submission to be a motion to amend Registration Nos. 2434540 and 2557602 pursuant to Section 7(e) of the Trademark Act, 15 U.S.C. § 1057(e), Respondent is allowed **THIRTY (30) DAYS** from the date of this order to file a renewed motion to amend Registration Nos.

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<sup>1</sup> Because Respondent neither served its May 12, 2021 submission, nor otherwise responded to the petition for partial cancellation, Respondent is in technical default. *See* Trademark Rule 2.114, 37 C.F.R. § 2.114. The decision whether to enter default judgment is within the Board's discretion. *See Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556, 1557 (TTAB 1991). Good cause for discharging default is generally found if (1) the delay in filing is not the result of willful conduct or gross neglect, (2) the delay will not result in substantial prejudice to the opposing party, and (3) the defendant has a meritorious defense. *Fred Hayman*, 21 USPQ2d at 1557; *see* Fed. R. Civ. P. 55(c). Here, there is nothing in the record to suggest that Respondent's technical failure to serve its submission was in bad faith or in willful disregard for the Board's rules and deadlines. Thus, the Board does not find that Respondent has been grossly negligent or willful. In addition, the Board does not find any prejudice to Petitioner's ability to prosecute its case, and Respondent has consented to Petitioner's proposed restrictions. *See, e.g., Pumpkin Ltd. v. Seed Corps*, 43 USPQ2d 1582, 1587 (TTAB 1997). Accordingly, the Board will not enter judgment by default.

2434540 and 2557602 that sets forth the requested amendments and indicates whether or not Petitioner consents thereto.<sup>2</sup>

In the event that Respondent does not respond to this order, Respondent's construed consent to entry of judgment will be accepted, judgment will be entered in favor of Petitioner with respect to the wording "public storage" in the recitation of services for International Class 36 of Registration Nos. 2434540 and 2557602, and the restriction to "self-storage" therein will be entered.

Proceedings are otherwise SUSPENDED pending Respondent's response to this order.

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<sup>2</sup> A motion to amend a registration must be accompanied by the proper fee under Trademark Rule 2.6, 37 C.F.R. § 2.6, and verified or supported by a declaration under Trademark Rule 2.20, 37 C.F.R. § 2.20.