

ESTTA Tracking number: **ESTTA1160433**

Filing date: **09/17/2021**

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

Proceeding	92077557
Party	Defendant Onstreaming LLC
Correspondence Address	ONSTREAMING LLC 3 HUTTON CENTRE DR 9TH FL SANTA ANA, CA 92707 UNITED STATES No email provided. No phone number provided.
Submission	Motion for Relief from entry of Default Judgment
Filer's Name	Michael N. Cohen
Filer's email	mcohen@cohenip.com, admin@cohenip.com
Signature	/Michael N. Cohen/
Date	09/17/2021
Attachments	Motion To Set Aside Default Judgment.pdf(82958 bytes)

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

In the matter of Trademark Ser. No. 87538077

DISH Network LLC)	
)	
v.)	Opposition No. 92077557
)	Mark: ONSTREAMING
Onstreaming LLC,)	
)	
Applicant.)	

MOTION TO SET ASIDE DEFAULT

COMES NOW the applicant, Onstreaming LLC (hereinafter “Applicant”), and 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 and Grounds of Defense in this matter. In support thereof Applicant states as follows:

STATEMENT OF THE CASE

1. On July 9, 2021 DISH Network LLC (“Opposer”) instituted the instant proceeding against the registration of Applicant’s trademark.
2. Applicant’s deadline to file its Answer and Grounds of Defense was August 19, 2021.
3. Applicant inadvertently failed to timely file a Motion for an extension requesting an extension or an Answer and Grounds of Defense while Applicant made a determination on representation in this matter.
4. 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 the 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 Applicant inadvertently lost track of the deadline to file a response or a motion for an extension in the instant matter 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 Applicant's inadvertent lapse in not having the response 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 Applicant but rather a calendaring error. Moreover, it is submitted that the Opposer 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 the Applicant will file its Answer and Grounds of Defense timely on September 20, 2021, 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, the Applicant respectfully requests that the Board accept the Answer and Grounds of Defense in the matter.

Respectfully submitted this 17th day of September, 2021.

Cohen IP Law Group, PC

/Michael N. Cohen/

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a copy of the foregoing this 17^h day of September, 2021 to be served via electronic mail, upon:

DISH Network LLC
Kate Bohmann
ADSERO IP
8210 Southpark Terrace
Littleton, CO 80120
efs@adseroip.com, kbohmann@adseroip.com, ian@adseroip.com, TDamhoff@Adseroip.com, ameyer@adseroip.com
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Respectfully submitted this 17th day of September, 2021.

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