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

Proceeding	91197024
Party	Defendant Keisha Whitaker
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Date	05/31/2011
Attachments	Applicants response to order to show cause with Exhibit.pdf (7 pages)(102041 bytes) Evidence.pdf (1 page)(81976 bytes)

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

Advance Magazine Publishers, Inc.)	Opposition No. 91197024
Opposer,)	
v.)	
Keisha Whitaker,)	
Applicant.)	

**APPLICANT’S RESPONSE TO ORDER TO
SHOW CAUSE WHY JUDGMENT BY DEFAULT SHOULD NOT BE ENTERED**

Applicant Keisha Whitaker (“Applicant”), by its attorneys, respectfully requests that the Trademark Trial and Appeal Board set aside the default entered against it, pursuant to Fed. R. Civ. P. 55(a). Specifically, Applicant hereby response to the April 28, 2011 Notice of Default in order to show cause why judgment by default should not be entered pursuant to Fed. R. Civ. P. 55(b). (“the OSC”).

Applicant is filing this preliminary response in an abundance of caution, as the Board has not yet ruled on the Consented to Motion for Extension of Time to Respond to Order To Show Cause Why Judgment by Default Should Not Be Entered, submitted by Applicant on May 25, 2011. In the event that the Board affords Applicant with an opportunity to respond to the OSC at a later date, Applicant reserves the right to submit a response at that time.

I. Relevant Authority

If a defendant who has failed to file a timely answer to the complaint responds to a notice of default by filing a satisfactory showing of good cause why default judgment should not be entered against it, the Board will set aside the notice of default. *See* TMBP 312.02 and Fed. R. Civ. P. 55(c). Accordingly, Applicant respectfully submits that the below argument constitutes a

satisfactory showing of good cause as to why default judgment should not be entered against it and that the Board should set aside the notice of default.

“Good cause why default judgment should not be entered against a defendant, for failure to file a timely answer to the complaint, is usually found when the defendant shows that (1) the delay in filing an answer 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. [Note 2.] The showing of a meritorious defense does not require an evaluation of the merits of the case. All that is required is a plausible response to the allegations in the complaint. [Note 3.]” *See* TMBP 312.02

“The determination of whether default judgment should be entered against a party lies within the sound discretion of the Board. [Note 4.] 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 a timely answer, and tends to resolve any doubt on the matter in favor of the defendant. Nevertheless, entry of default judgment may be necessary in some cases. [Note 5.]” *See* TMBP 312.02

II. Discussion

Good cause exists as to why default judgment should not be entered against Applicant, for failure to file a timely answer to the complaint.

Firstly, as set forth in the accompanying Declaration of Paul Papile, the delay in filing an answer was not the result of willful conduct or gross neglect on the part of Applicant.

Secondly, Opposer will not be substantially prejudiced by the delay. Indeed, as set forth in the Board’s notice of reissued dates, dated February 3, 2011, Applicant's response to the Notice of the Opposition was due on March 15, 2011. On May 19, 2011, the undersigned counsel contacted Opposer's counsel to request Opposer’s consent to set aside the default and to discuss an informal resolution of this dispute. Opposer ultimately consented to extend the time

for Applicant to respond to the OSC by 30 days and, on May 25, 2011, Applicant filed the Consented to Motion for Extension of Time to Respond to Order To Show Cause Why Judgment by Default Should Not Be Entered. By May 19, 2011, the date that Applicant's undersigned counsel first contacted Opposer's counsel, discovery in this Case would have barely commenced. Accordingly, Opposer will not be substantially prejudiced by the delay caused by Applicant's failure to timely respond to the Notice of Opposition.

Thirdly, Applicant has meritorious defenses to Opposer's allegations in this action. As stated in TMBP 312.02, the showing of a meritorious defense does not require an evaluation of the merits of the case; all that is required is a plausible response to the allegations in the complaint. Indeed, the three marks in the registrations proffered by Opposer are distinguishable on their face.

1. Reg. No. 407439, for the mark GLAMOUR, for a "monthly magazine" in International Class 016;
2. Reg. No. 503282, for the mark GLAMOUR (in design), for a "monthly magazine" in International Class 016;
3. Reg. No. 1953217, for the mark GLAMOUR WOMEN OF THE YEAR, for "educational services, namely providing incentives to women to demonstrate excellence in a variety of fields through the issuance of an annual award," in International Class 041;
4. Reg. No. 3128415, for the mark GLAMOUR WOMEN OF THE YEAR (in design), for "Entertainment services, namely production of television programs; entertainment, namely, a continuing annual awards ceremony show broadcast over television," in International Class 041; and
5. Reg. No. 2553759, for the mark GLAMOUR.COM, for "providing fashion and beauty information distributed over television, satellite, audio, video, and global computer

networks and providing a wide range of information by means of global computer networks,” in International Class 041.

These marks and the goods/services recited therein differ in numerous respects from Applicant's EVERYDAY GLAMOUR mark for “Consultation and advice regarding personal fashion skills and lifestyle improvement available in person and through television, cable, satellite television and computer networks.”

This is especially true in light of the fact that there are numerous registered, allowed, and published registrations/applications for marks entertainment services that include the word GLAMOUR. Attached hereto as **Exhibit 1** is a printout from TESS of applications/registrations for marks that include GLAMOUR for entertainment services, many of which do not belong to Opposer. Accordingly, for these and other reasons which will be addressed in greater detail in these proceedings, Applicant has meritorious defenses.

In addition, Applicant submits herewith its Answer to the Notice of Opposition.

THEREFORE, it is respectfully submitted that the foregoing constitutes a proper showing of good cause to warrant setting aside the entry of default -- especially in view of the strong policy favoring deciding cases on their merits and the Board’s strong reluctance to enter a default judgment for failure to file a timely answer. Accordingly, Applicant respectfully requests that the Board enter an order setting aside the entry of default and, instead, allow this matter to proceed.

Dated: May 31, 2011

Respectfully Submitted,

/s/

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