

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board**

Serial No. 87123456;

For the mark JANE'S DOUGHS

John Doe, Inc.

Opposer,

vs.

Jane Doe, LLC,

Applicant.

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Opposition No. 91123456

MOTION TO SET ASIDE DEFAULT

COMES NOW the Applicant, Jane Doe, 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 or about January 1, 2018 John Doe, Inc. ("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 February 12, 2018.
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 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 has attached its Answer and Grounds of Defense setting forth it's 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 attached Answer and Grounds of Defense in this matter.

Respectfully submitted this _15th_ day of March, 2018.

Jane Doe, LLC

/Jane Doe/
Jane Doe, LLC
123 Anywhere Street
Los Angeles, CA 12345

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a copy of the foregoing this 15th day of March, 2018
to be served, via first class mail, postage prepaid, upon:

John Doe, Inc.
1234 Somewhere Street
New York, NY 20021

/Jane Doe/
Jane Doe