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Filing date: **08/17/2006**

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

Proceeding	92045690
Party	Plaintiff Toytrackerz LLC Toytrackerz LLC 302 South Lowman Street Fort Scott, KS 66701 UNITED STATES
Correspondence Address	Terri Lynn Coop Toytrackerz LLC 302 South Lowman Street Fort Scott, KS 66701 UNITED STATES toylaw@classicnet.net
Submission	Other Motions/Papers
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Attachments	ttabdefaultmotion.pdf (2 pages)(49562 bytes) ttabdefaultbrief1.pdf (38 pages)(163407 bytes) Aaddresspage.pdf (4 pages)(12717 bytes) Bttabdocket.pdf (1 page)(38425 bytes) Cnonfinal.pdf (3 pages)(14439 bytes) Dnewregs.pdf (1 page)(70518 bytes) Ehelderindict.pdf (2 pages)(62119 bytes) Fhelderappeal.pdf (10 pages)(33565 bytes) Gcivilcomplaint.pdf (8 pages)(1744587 bytes) Hcivilcounterclaim.pdf (25 pages)(72513 bytes) Iltabcxr.pdf (1 page)(35391 bytes) Jttabjwa.pdf (1 page)(37472 bytes) Kttabbotw.pdf (1 page)(35392 bytes)

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

In the matter of trademark Registration No: **1776628**

In the matter of TTAB Cancellation Proceeding No: **92045690**

For the mark: **“MARX” [standard character mark]**

Date registered: **June 15, 1993 [renewed August 8, 2003, cancelled June 30, 2006]**

Toytrackerz LLC

A Kansas Limited Liability Company

vs.

American Plastic Equipment Inc.

A Florida Corporation

**ANSWER IN OPPOSITION TO MOTION
TO VACATE DEFAULT JUDGMENT**

1. The Plaintiff, Toytrackerz LLC dba Circle X Ranch is a Kansas Limited Liability Company having its principal place of business at 302 South Lowman Street, Fort Scott, Kansas, 66701.
2. On information and belief, Defendant American Plastic Equipment, Inc. is a Florida Corporation having its principal place of business at 101 South 15th Street, Sebring, Ohio, 44672.
3. Plaintiff filed a Petition for Cancellation of the above referenced mark on April 11, 2006. On June 23, 2006, the Board granted Plaintiff's Motion for Default Judgment. On June 30, 2006, the Commissioner issued an order cancelling the mark.
4. On August 3, 2006, Defendant filed a motion to vacate the default judgment.
5. For the reasons stated below and detailed in the attached brief, Plaintiff requests the Board deny the Motion to Vacate Default Judgment and terminate the case.
6. In support of this request, Plaintiff states as follows:
 - a) Defendant has not shown that their failure to file any responsive pleading is a result of 'excusable neglect' as required by FRCP 60(b).
 - b) Defendant has not shown that their attorney's failure to file any responsive

pleading is a result of 'excusable neglect' as required by FRCP 60(b).

- c) Plaintiff had standing to initiate the cancellation action pursuant to TTAB rules of practice.
- d) Plaintiff had grounds to initiate the cancellation action pursuant to TTAB rules of practice.

Based on Defendant's failure to file a responsive pleading within the period allowed by the Trademark Trial and Appeal Board, and Defendant's failure to meet their burden of proof to qualify for relief under FRCP 60(b), Plaintiff asks this Board to deny the Motion to Vacate Default Judgment, to terminate the case and to grant any other equitable relief deemed just and fair. Answer to Motion For Default Judgment respectfully submitted on the 17th day of August 2006.

/s/Terri Lynn Coop/
Terri Lynn Coop
Attorney For The Plaintiff
302 South Lowman Street
Fort Scott KS 66701
620-224-2945
toylaw@classicnet.net

CERTIFICATE OF SERVICE

I, *Terri Lynn Coop*, hereby certify that a true and complete copy of the foregoing *Answer In Opposition to Motion To Vacate Default Judgment* has been served on *Defendant's Attorney - David E. Herron II*, by mailing said copy on the 17th day of August 2006, via First Class Mail, postage prepaid to:

David E. Herron II
PO Box 2778
Kansas City KS 66110

/s/Terri Lynn Coop/
Terri Lynn Coop
Attorney For The Plaintiff
302 South Lowman Street
Fort Scott KS 66701
620-224-2945
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**BRIEF IN SUPPORT OF OPPOSITION TO MOTION
TO VACATE DEFAULT JUDGMENT**

THE MATTER BEFORE THE BOARD

The matter before the Trademark Trial and Appeal Board [TTAB] is Defendant's Motion to Vacate Default Judgment with respect to the cancellation of the standard character mark "Marx," Registration number 1776628.

**PROCEDURAL HISTORY AND DESCRIPTION
OF THE RECORD**

The following information is taken from the public records of the TTAB, as reported through 'TTABVUE,' the Trademark Trial and Appeal Board Inquiry System.

1. On April 11, 2006, the Plaintiff, Toytrackerz LLC, instituted Cancellation #92045690 against Defendant, American Plastic Equipment, Inc. The petition was submitted via the Trademark Trial and Appeal Board Electronic Filing System and assigned the ESSTA Tracking Number ESTTA75540. The petition was accompanied by the required fee.
2. On April 11, 2006, the TTAB acknowledged the filing and mailed notice to both Plaintiff and Defendant. This notice established an Answer date of May 21, 2006.
3. On May 23, 2006, the Plaintiff filed a Motion for Default Judgment. The motion was submitted via the Trademark Trial and Appeal Board Electronic Filing System and

assigned the ESSTA Track Number ESTTA81893. As stated in the Certificate of Service, a copy of the Motion for Default Judgment, the Plaintiff mailed a copy of the motion via first class mail to Defendant at the address of record.

4. On June 22, 2006, the TTAB granted the Motion for Default Judgment and mailed notice to both Plaintiff and Defendant at their address of record.
5. On June 30, 2006, the Commissioner of Trademarks issued an order cancelling Trademark Registration number 1776628. Notice of the cancellation was mailed to Plaintiff and Defendant at their address of record. The TTAB case was terminated.
6. On August 3, 2006, Defendant filed a Motion to Vacate the Default Judgment. This motion was filed by United States mail. The motion was deemed received and docketed by the TTAB on August 10, 2006.

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