

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

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Mailed: February 8, 2002

Opposition No. 123,758

MING LAU, D/B/A KOWLOON

WHOLESALE MARKET

v.

WESTERN PACIFIC PRODUCE

Thomas W. Wellington,
Interlocutory Attorney:

On October 30, 2001, applicant filed an answer, over thirty days past the deadline set forth in the Board's August 17, 2001 institution order.

On November 6, 2001, and without having associated applicant's late-file answer with the proceeding file, the Board issued a show cause order in this proceeding allowing applicant time to show cause why default judgment should not be entered against applicant for failure to file an answer.

On July 18, 2001, applicant filed a response to the notice of default noting that it had already filed an answer; that said answer was not timely filed because "of pressing business matters." Applicant further argued that

the Board improperly issued the notice of default judgment order.

Turning to applicant's argument that entry of notice of default was improper, it appears that counsel for applicant is confused as to the notice of default order issued. The Board issued a notice of default judgment pursuant to Fed. R. Civ. P. 55(a) because, indeed, applicant did not file an answer within the time set in the Board's August 17, 2001 institution order. Therefore, applicant was in default. The Board did not enter default judgment; instead, the Board allowed applicant time to show good cause why judgment should not be entered.

The issue of whether default judgment should be entered against a defendant, whether raised by means of the Board's issuance of a notice of default or defendant's motion asking that its late-filed answer be accepted, is the FRCP 55(c) standard. That is, whether the defendant has shown *good cause* why default judgment should not be entered against it. See *Paolo's Associates Limited Partnership v. Paolo Bodo*, 21 USPQ2d 1899 (Comm'r 1990), and *Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556 (TTAB 1991).

Based on the information provided by applicant and its apparent intention to defend this case on the merits, the

show cause order is hereby discharged.¹ Applicant's answer has been noted and entered.

Trial dates, including the close of discovery, are reset as follows:

THE PERIOD FOR DISCOVERY TO CLOSE:	May 25, 2002
30-day testimony period for party in position of plaintiff to close:	August 26, 2002
30-day testimony period for party in position of defendant to close:	October 25, 2002
15-day rebuttal testimony period for plaintiff to close:	December 9, 2002

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

¹ The Board instructs applicant that "pressing business matters" is generally not accepted by the Board as an excuse for failure in meeting filing deadlines and that, by itself, does not amount to *good cause*.