

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

Lykos

Mailed: April 16, 2003

Opposition No. 91153718

Colgate-Palmolive Co.

v.

Marble Sportswear, Inc.

Angela Lykos, Interlocutory Attorney

On February 27, 2003, applicant was ordered to show cause why judgment should not be entered against it in accordance with Fed. R. Civ. P. 55(b).

On March 31, 2003, applicant submitted a response to the order which the Board construes as a motion to set aside the notice of default, as well as an answer to the notice of opposition.

Whether default judgment should be entered against a party is determined in accordance with Fed. R. Civ. P. 55(c), which reads in pertinent part: "for good cause shown the court may set aside and entry of default." As a general rule, good cause to set aside a defendant's default will be found where the defendant's delay has not been willful or in bad faith, when prejudice to the plaintiff is lacking, and

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where the defendant has a meritorious defense. *See Fred Hyman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556 (TTAB 1991). Moreover, the Board is reluctant to grant judgments by default, since the law favors deciding cases on their merits. *See Paolo's Associates Limited Partnership v. Paolo Bodo*, 21 USPQ2d 1899 (Comm'r 1990).

According to applicant, its failure to timely file an answer was due to the fact that applicant's attorney had been on maternity leave at the time the answer was due and was not receiving mail from her office in a timely manner. The Board is persuaded that the foregoing reason constitutes good cause to set aside applicant's notice of default.

In view thereof, applicant's motion to set aside its notice of default is granted, and applicant's answer, filed concurrently with the motion, is accepted.

Trial dates remain as set in the Board's institution order dated December 4, 2002.