

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

Mailed: June 17, 2004

Opposition No. **91159137**

THRESHOLD ENTERPRISES LTD.

v.

NATURAL SOURCE INTERNATIONAL,
LTD.

Frances S. Wolfson, Interlocutory Attorney:

On January 21, 2004, the Board issued an order instituting this proceeding and setting March 1, 2004, as the deadline for applicant to either answer the notice of opposition or to file a motion to extend the time for filing an answer. The deadline was extended to May 1, 2004 upon applicant's consented motion approved by the Board.

On May 21, 2004, applicant filed a late answer together with a motion for leave to file a late answer. Opposer filed a brief in response to applicant's motion.

Inasmuch as applicant's answer was due no later than May 1, 2004, applicant is technically in default. See Trademark Rule 2.106(a); and Fed. R. Civ. P. 55.

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 an 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 where defendant has a meritorious defense. See *Fred Hyman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556 (TTAB 1991).

In this case, the Board finds that applicant's delay has not been willful or in bad faith. Applicant submitted a settlement proposal to opposer nine days before its answer was due. It was not unreasonable for applicant to believe that opposer was reviewing the proposal and that until opposer rejected the proposal, opposer would consent to a further extension of the answer deadline. Moreover, we find that opposer is not prejudiced by the 20-day late filing and that by extending the discovery and trial dates in this case, any possible prejudice to opposer may be obviated. Finally, by filing an answer which denies the fundamental allegations in the notice of opposition, applicant has asserted a meritorious defense to this action.

In view of the foregoing, applicant's late-filed answer is acceptable and is hereby entered.

Trial dates, including the closing date for discovery, are reset as indicated below.

DISCOVERY PERIOD TO CLOSE:	August 15, 2004
30-day testimony period for party in the position of plaintiff to close:	November 13, 2004
30-day testimony period for party in the position of the defendant to close:	January 12, 2005
15-day rebuttal period for party in the position of the plaintiff to close:	February 26, 2005

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.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

New Developments at the Trademark Trial and Appeal Board

- Files of TTAB proceedings can now be examined using TTAB Vue, accessible at <http://ttabvue.uspto.gov>. After entering the 8-digit proceeding number, click on any entry in the prosecution history to view that paper in PDF format. Papers filed prior to January 2003 may not have been scanned. Unscanned papers remain available for public access at the TTAB. For further information on file access, call the TTAB at (703) 308-9330.
- Parties should also be aware of recent changes in the rules affecting trademark matters, including the rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003) (www.uspto.gov/web/offices/com/sol/notices/68fr55748.pdf); Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003) (www.uspto.gov/web/offices/com/sol/notices/68fr48286.pdf).
- The second edition (June 2003) of the Trademark Trial and Appeal Board Manual of Procedure (TBMP) has been posted on the USPTO web site at www.uspto.gov/web/offices/dcom/ttab/tbmp/.

