

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: October 21, 2005

Opposition No. **91163884**

O' Neil Product Development,
Inc.

v.

Read & Seal. LLC

Cheryl Goodman, Interlocutory Attorney:

On August 25, 2005 applicant filed its response to the Board's notice of default.¹

In support of its request to set aside default, applicant advises that it is opposed to "any automatic default" because applicant has never received any Board correspondence prior to the August 5, 2005 notice of default.²

Inasmuch as applicant has advised that it did not receive the institution order and notice of opposition as

¹ Applicant's communication does not indicate proof of service of a copy of same on counsel for opposer as required by Trademark Rule 2.119 which requires all papers filed with the Board to be served on the opposing party. In order to expedite this matter, a copy of said communication is forwarded herewith to counsel for opposer, but strict compliance with Trademark Rule 2.119 is required in all further papers filed with the Board.

² Applicant also asserts in its letter that its "patent" application has been ultimately abandoned and that it is not aware that it has any pending business with the Office. However, the application at issue here is a trademark application for the mark RSWEB, application Serial No. 78033719. That application has not been expressly abandoned according to Office records.

originally mailed or remailed, notice of default is set aside. *Cf. Commodities Future Trading Com'n v. Wall Street Underground, Inc.*, 221 F.R.D. 554, 558 (D. Kan. 2004) (entry of default judgment must be set aside due to court's lack of personal jurisdiction over defendant because defendant never properly served with complaint). The notice of opposition is attached herein.

Applicant is allowed until FORTY DAYS from the mailing date of this order to file its answer to the notice of opposition.

Discovery and trial dates are reset as follows:

DISCOVERY PERIOD TO CLOSE:	April 20, 2005
30-day testimony period for party in position of plaintiff to close:	July 19, 2005
30-day testimony period for party in position of defendant to close:	September 17, 2005
15-day rebuttal testimony period for party in position of plaintiff to close:	November 1, 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.