

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

Mailed: February 22, 2007

Opposition No. 91170556

ExxonMobil Oil Corporation

v.

Hilton Hospitality, Inc.

Amy Matelski, Paralegal Specialist

On January 22, 2007, the Board entered notice of default against applicant for failure to file an answer or a motion to further extend its time to answer.

On February 21, 2007 applicant filed a response to the show cause order and a motion to suspend proceedings with opposer's consent, pending a settlement agreement.

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 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).

Insofar as applicant's failure to timely answer the notice of opposition was due to the fact that the parties were engaged in settlement discussion, the Board's January 22, 2007 default is set aside.

Because the parties are negotiating for a possible settlement of this case, proceedings herein are suspended until **three months** from the mailing date of this action, subject to the right of either party to request resumption at any time. See Trademark Rule 2.117(c).

In the event that there is no word from either party concerning the progress of their negotiations, upon conclusion of the suspension period, proceedings shall resume without further notice or order from the Board, upon the schedule set out below.

Applicant is allowed THIRTY DAYS from resumption in which to answer the notice of opposition. The parties are allowed the same THIRTY DAYS in which to serve responses to any outstanding discovery requests. Trial dates, including the close of discovery, are reset as follows:

Proceedings Resume: **May 23, 2007**

Discovery period to close: **September 20, 2007**

Thirty-day testimony period for party in position of plaintiff to close: **December 19, 2007**

Thirty-day testimony period for party in position of defendant to close: **February 17, 2008**

Fifteen-day rebuttal testimony period to close: **April 2, 2008**

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.

If, during the suspension period, either of the parties or their attorneys should have a change of address, the Board should be so informed.