

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

al/apb

Mailed: October 10, 2006

Opposition No. 91170826

Charles Worthington Hair &  
Beauty Company Limited

v.

ESPN, Inc.

**Andrew P. Baxley, Interlocutory Attorney:**

On July 20, 2006, applicant was ordered to show cause why judgment should not be entered against it in accordance with Fed. R. Civ. P. 55(b) for applicant's failure to timely answer the notice of opposition.

In response thereto, applicant filed a combined motion to set aside the notice of default<sup>1</sup> and concurrently filed its answer. Applicant states that its counsel prepared an answer but that "due to internal miscommunications" it was never filed. Applicant's counsel indicates that until he received the order to show cause on or about August 9, 2006,

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<sup>1</sup> A notice of default for failure to timely answer is essentially an *ex parte* matter between the Board and a defendant and does not contemplate the filing of a brief in opposition to a response thereto. Therefore, a defendant's response to a notice of default should not be in the form of a motion, which contemplates full briefing by the parties. Compare TBMP Sections 312.01 and 502.02(b) (2d ed. rev. 2004).

he was under the assumption that the answer has been filed in this matter.

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).

The Board finds that applicant has shown good cause to set aside the notice of default. First, applicant's failure to timely answer the notice of opposition was neither willful or the result of gross neglect and rather was caused by an administrative error by applicant's counsel. Second, there is no prejudice to opposer other than a minor delay that would result from accepting applicant's late-filed answer. Finally, the Board finds that applicant has attempted to set forth a meritorious defense by way of its

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answer. Whether applicant will prevail in this proceeding is, of course, a matter for trial.

In view thereof, the order to show cause why default should not be entered is hereby discharged and the notice of default is set aside. Applicant's answer is accepted and made of record.

The discovery and trial dates remain as previously set in the Board's May 10, 2006 institution order.