

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

Mailed: September 17, 2008

Opposition No. 91179074

Ascencia Bank, Inc.

v.

Ascentia Capital Partners,
LLC

**M. Catherine Faint,
Interlocutory Attorney:**

On August 26, 2008, the Board issued a notice of default in this proceeding, which allowed applicant time to show cause why default judgment should not be entered against it for loss of interest in this case.

Applicant filed a response in which it indicated that it wishes to represent itself in this matter and was unaware it needed to respond beyond a letter sent to opposer's counsel by applicant's prior attorney.¹

The standard for determining default judgment is found in Fed. R. Civ. P. 55(c), which reads in pertinent part: "for good cause shown the court may set aside an entry of

¹ Applicant did not provide a certificate of service for its communication as required by Trademark Rule 2.119. Opposer may view a copy of the communication at <http://ttabvue.uspto.gov/ttabvue/v?pno=91179074&pty=OPP&eno=15>. Applicant also filed a copy of an offer of settlement. Such documents should not be filed with the Board. See Fed. R. Evid. 408. The Board has designated the document as "Confidential," since it was marked as such, and the document has been given no consideration.

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). The determination of whether default judgment should be entered against a party lies within the Board's sound discretion. In exercising that discretion, the Board is mindful of its policy to decide cases on their merits where possible and therefore only reluctantly enters judgment by default for failure to timely answer. See TBMP § 312.02 (2d ed. rev. 2004).

In this instance, we find that applicant has shown cause sufficient to avoid a default judgment. First, there is no evidence that applicant's failure to timely respond to the Board's notice was either willful or the result of gross neglect. Second, the Board would not characterize the delay from accepting applicant's response as significant, as opposer will still be able to avail itself of the remaining discovery period. Finally, the Board finds that applicant has attempted to set forth a meritorious defense, by way of its answer. Whether applicant will prevail in this proceeding is, of course, a matter for trial.

Accordingly, applicant's motion is granted and the notice of default mailed on August 26, 2008, is hereby set aside. Fed. R. Civ. P. 55.

Pro Se Information

Applicant is representing itself. Applicant is reminded that it will be expected to comply with all applicable rules and Board practices during the remainder of this case. The Trademark Rules of Practice, other federal regulations governing practice before the Patent and Trademark Office, and many of the Federal Rules of Civil Procedure govern the conduct of this opposition proceeding. Applicant should note that Patent and Trademark Rule 10.14 permits any person or legal entity to represent itself in a Board proceeding, though it is generally advisable for those unfamiliar with the applicable rules to secure the services of an attorney familiar with such matters.

The Patent and Trademark Office cannot aid in the selection of an attorney. In addition, the Board may not provide legal advice to the parties, although the Board may provide information as to procedures.

If a party does not retain counsel, then it will have to familiarize itself with the rules governing this proceeding. The Trademark Rules are codified in part two of Title 37 of the Code of Federal Regulations (also referred to as the CFR). The CFR and the Federal Rules of Civil

Procedure, are likely to be found at most law libraries, and may be available at some public libraries. Finally, the Board's manual of procedure will be helpful.

On the World Wide Web, the parties may access most of these materials by logging onto <http://www.uspto.gov/> and making the connection to trademark materials.

Applicant must pay particular attention to Trademark Rule 2.119. That rule requires a party filing any paper with the Board during the course of a proceeding to serve a copy on its adversary, unless the adversary is represented by counsel, in which case, the copy must be served on the adversary's counsel. The party filing the paper must include "proof of service" of the copy. "Proof of service" usually consists of a signed, dated statement attesting to the following matters: (1) the nature of the paper being served; (2) the method of service (e.g., first class mail); (3) the person being served and the address used to effect service; and (4) the date of service. *In the future any papers filed without a signed certificate of service will be given no further consideration by the Board.*

The parties should note that any paper required to be filed herein must be received by the Patent and Trademark Office by the due date, unless one of the filing procedures set forth in Trademark Rules 2.197 or 2.198 is utilized.

Files of TTAB proceedings can now be examined using TTABVue, 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.

The first revision of the second edition (March 2004) 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/.

The Board is an administrative tribunal empowered to determine only the right to register. See TBMP §102.01 (2d ed. rev. 2004). A Board inter partes proceeding, such as this case, is similar to a civil action in a Federal district court. There are pleadings, a wide range of possible motions, discovery (a party's use of discovery depositions, interrogatories, document requests, and requests for admission to ascertain the facts underlying its adversary's case), a trial, and briefs, followed by a decision on the case.

The Board does not preside at the taking of testimony. Rather, all testimony is taken out of the presence of the Board during the assigned testimony, or trial, periods, and the written transcripts thereof, together with any exhibits, are then filed with the Board. No paper, document, or exhibit will be considered as evidence in the case unless it

has been introduced in evidence in accordance with the applicable rules.

Reset Dates

Discovery and trial dates are reset as follows:

DISCOVERY PERIOD TO CLOSE:	November 22, 2008
30-day testimony period for party in position of plaintiff to close:	February 20, 2009
30-day testimony period for party in position of defendant to close:	April 21, 2009
15-day rebuttal testimony period for plaintiff to close:	June 5, 2009

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 Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses: <http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>

http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>