

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

EJW

Mailed: April 15, 2008

Opposition No. 91179373

Dmitri Kuklachev

v.

Mark Gelfman

Elizabeth J. Winter, Interlocutory Attorney:

On November 8, 2007, the Board issued a notice of default to applicant in view of his failure to timely answer the notice of opposition. Applicant filed a response thereto on December 10, 2007, accompanied by his answer, explaining that his failure to timely file an answer was because applicant's counsel did not receive a copy of the notice of opposition and did not have notice of the proceeding until counsel received the notice of default. Applicant also contends in his answer that he has a meritorious defense to the claim(s) set forth in the notice of opposition.

If a defendant who has failed to file a timely answer to the complaint responds to a notice of default by filing a satisfactory showing of good cause why default judgment

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should not be entered against it, the Board will set aside the notice of default. See Fed. R. Civ. P. 55(c); and *Paolo's Associates Limited Partnership v. Paolo Bodo*, 21 USPQ2d 1899 (Comm'r 1990); and *Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556 (TTAB 1991). See also TBMP § 312.02 (2d ed. rev. 2004).

In this case, the Board finds that applicant's failure to timely file its answer to the notice of opposition was not the result of willful inattention or bad faith; and that opposer is not prejudiced by applicant's late filing.

In view of defendant's continued interest in this case, notice of default is **discharged** and applicant's answer to the notice of opposition is made of record and is accepted as his responsive pleading herein.

The Board also notes the parties' stipulated motion (filed March 17, 2008) to extend the discovery period for ninety days, until June 24, 2008,¹ and to reset trial dates commensurate with said extension.² The motion to extend the

¹ While the Board attempts, where possible, to notify the parties of its decision on a consented motion to extend, prior to expiration of the enlargement sought, the Board is under no obligation to do so, and in many cases cannot. See *Chesebrough-Pond's Inc. v. Faberge, Inc.*, 618 F.2d 776, 205 USPQ 888 (CCPA 1980). Therefore, it is preferable, that a motion to extend request that the new period or periods be set to run from the date of the Board's decision on the motion.

² The change in correspondence address filed by opposer's counsel on March 17, 2008 is noted and made of record.

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discovery period and to reset trial dates is granted.

Trademark Rule 2.127(a), 37 C.F.R. § 2.127(a).

Accordingly, the discovery period and trial dates are reset as follows:

DISCOVERY PERIOD TO CLOSE:	June 24, 2008
Thirty-day testimony period for party in position of plaintiff to close:	September 22, 2008
Thirty-day testimony period for party in position of defendant to close:	November 21, 2008
Fifteen-day rebuttal testimony period to close:	January 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. See Trademark Rule 2.125, 37 C.F.R. § 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b), 37 C.F.R. §§ 2.125(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129, 37 C.F.R. § 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

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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>