

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

lg/csg

Mailed: October 17, 2008

Opposition No. 91184808

Kiss My Face Corporation

v.

Eco-Logics, Inc.

On August 26, 2008, 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.

Applicant filed, on September 6, 2008, a response to the notice of default. Applicant states that its failure to file an answer to the notice of opposition was due a family medical emergency.

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 is persuaded that the foregoing reason constitutes good cause to set aside applicant's notice of default.

In view thereof, the notice of default is set aside.

In conjunction with its response to the notice of default, applicant filed an abandonment of its application Serial No. 77315139.<sup>1</sup>

Trademark Rule 2.135 provides that if, in an inter partes proceeding, the applicant files an abandonment without the written consent of every adverse party to the proceeding, judgment shall be entered against applicant.

In view thereof, and because opposer's written consent to the abandonment is not of record, judgment is hereby entered against applicant, the opposition is sustained and registration to applicant is refused.

***By the Trademark Trial  
and Appeal Board***

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<sup>1</sup> Applicant's abandonment does not indicate proof of service of a copy of same on counsel for opposer as required by Trademark Rule 2.119. In order to expedite this matter, a copy of said abandonment is forwarded herewith to counsel for opposer.