

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

vb

Mailed: January 21, 2009

Opposition No. 91185479

Chomp, Inc., Dwindle, Inc.

v.

Nathan Welter

Cheryl Butler, Attorney, Trademark Trial and Appeal Board:

On December 13, 2008, the Board sent a notice of default to applicant because no answer had been filed. On January 12, 2009, applicant filed a response to the notice of default, a motion to set aside the default order and a copy of its answer to the notice of opposition.¹

In its response, applicant indicates that confusion arose as to opposer's representation in view of a move by opposer's attorney to another law firm. Applicant undertook steps to ascertain the correct representation. In addition, the parties were engaged in settlement discussions and applicant believed the case would settle prior to any further action by the Board.

Whether default judgment should be entered against a party is determined in accordance with Fed. R. Civ. P.

¹ Defendant's revocation of power of attorney and appointment of new address is noted and all future correspondence will be directed to Kit M. Stetina of the law firm of Stetina Brunda Garred & Brucker.

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55(c), which reads in pertinent part: "for good cause shown the court may set aside an 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 defendant has a meritorious defense. *See Fred Hyman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556 (TTAB 1991).

The Board finds that the reasons for applicant's delay were not due to applicant's willful conduct or bad faith. By filing an answer, applicant has shown it intends to defend in the case and may have a meritorious defense. Also, because confusion arose as to opposer's representation, opposer is not prejudiced by the delay in filing an answer.

In view of the foregoing, the notice of default is hereby set aside and applicant's answer is noted and entered.

In further view thereof, and because the parties are negotiating for 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.

Proceedings Resume:	4/14/2009
Deadline for Discovery Conference	5/14/2009
Discovery Opens	5/14/2009
Initial Disclosures Due	6/13/2009
Expert Disclosures Due	10/11/2009
Discovery Closes	11/10/2009
Plaintiff's Pretrial Disclosures	12/25/2009
Plaintiff's 30-day Trial Period Ends	2/8/2010
Defendant's Pretrial Disclosures	2/23/2010
Defendant's 30-day Trial Period Ends	4/9/2010
Plaintiff's Rebuttal Disclosures	4/24/2010
Plaintiff's 15-day Rebuttal Period Ends	5/24/2010

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.
