

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

Mailed: January 16, 2009

Opposition No. 91187434

Food For Life Baking Co., Inc.

v.

E.A. Sween Company

Frances S. Wolfson, Interlocutory Attorney:

On January 9, 2009, the Board issued a notice of default in view of applicant's failure to timely answer the notice of opposition. On January 12, 2009, applicant filed a motion to set aside the default, together with its answer. Applicant has shown that it served and filed its answer by U.S. first class mail on December 22, 2008. Accordingly, its answer was timely filed and the notice of default is hereby set aside.

Applicant's answer included a "counterclaim" to cancel opposer's registration No. 1836407. Office records indicate that applicant has not paid the fee for the counterclaim. Moreover, to the extent the grounds for cancellation are that opposer's registration No. 1836407 is void ab initio, because the registration is over five years old, voidness of the registration is not a ground for cancellation set forth

in Section 14 of the Trademark Act, 15 U.S.C. § 1064.

Accordingly, the counterclaim has not been entered.

Trial dates, including conferencing, disclosure dates and the close of discovery, remain as set in the Board's institution order dated November 11, 2008.