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

MBA

Mailed: March 8, 2010

Opposition No. 91192118

LFP IP, LLC

v.

Legal Hustlers

Michael B. Adlin, Interlocutory Attorney:

On February 17, 2010, the Board issued a notice of default to applicant because applicant failed to timely answer the notice of opposition or request an extension of time in which to file an answer. The Board allowed applicant 30 days in which to show cause why default judgment should not be entered. Applicant's response to the notice of default, filed February 22, 2010, is noted.[1] Although applicant does not fully address why default judgment should not be entered or why applicant failed to timely file its answer, or why applicant has still not filed an answer, applicant indicates

[1] Applicant's response does not include an acceptable certificate of service as required by Trademark Rule 2.119 (which is more fully explained later in this order). In order to expedite this matter, a copy of applicant's response is forwarded herewith to counsel for opposer, but strict compliance with Trademark Rule 2.119 is required in all further papers filed with the Board.

that “some very distracting obstacles” have prevented it from taking necessary action in this proceeding.

“However the issue [of default] is raised, the standard for determining whether default judgment should be entered against the defendant for its failure to file a timely answer to the complaint is the Fed. R. Civ. P. 55(c) standard.” TBMP §§ 312.01, 508 (2d ed. rev. 2004). Under Fed. R. Civ. P. 55(c), default may be set aside "for good cause shown.” As a general rule, good cause will be found where the applicant's delay has not been willful or in bad faith, where prejudice to the opposer is lacking, and where the applicant 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).

Here, applicant effectively claims that its delay was neither willful nor in bad faith. While applicant’s explanation is sparse at best, and such attempts to show cause will not be accepted in the future, it is sufficient to establish that applicant’s delay was not willful or in bad faith. Given the relatively early stage of this proceeding, opposer would not be prejudiced by the delay resulting from

setting aside the notice of default. However, because applicant has still not filed an answer to the notice of opposition, or addressed any of its substantive allegations, despite entry of the notice of default, it is impossible to determine whether applicant has a meritorious defense to the notice of opposition. Accordingly, a decision on the question of default is **DEFERRED**.

Applicant is allowed one final chance, until **APRIL 8, 2010,** to file a [proposed] answer to the notice of opposition. The question of default will be further considered after applicant files (or fails to file) the [proposed] answer. In preparing an answer, applicant should be aware of the requirements of Rule 8(b) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Trademark Rule 2.116(a). Fed. R. Civ. P. 8(b) provides, in part:

> A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder.

The notice of opposition filed by opposer herein consists of 15 numbered paragraphs setting forth the basis of opposer's claim of damage, and a prayer for relief. In accordance with Fed. R. Civ. P. 8(b), it is incumbent on applicant to answer the notice of opposition by admitting or denying the allegations contained in each paragraph. If applicant is without sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, it should so state and this will have the effect of a denial. In preparing its answer, applicant should review Trademark Board Manual of Procedure ("TBMP") § 311 (2d ed. rev. 2004).

Furthermore, applicant is very strongly encouraged to retain an attorney to assist it in this proceeding. However, in the event applicant chooses to not retain an attorney, information for pro se parties is included at the end of this order. Disclosure, conferencing, discovery, trial and other dates are reset as follows:

Time to Answer	**April 8, 2010**
Deadline for Discovery Conference	**May 8, 2010**
Discovery Opens	**May 8, 2010**
Initial Disclosures Due	**June 7, 2010**
Expert Disclosures Due	**October 5, 2010**
Discovery Closes	**November 4, 2010**
Plaintiff's Pretrial Disclosures	**December 19, 2010**

Plaintiff's 30-day Trial Period Ends	**February 2, 2011**
Defendant's Pretrial Disclosures	**February 17, 2011**
Defendant's 30-day Trial Period Ends	**April 3, 2011**
Plaintiff's Rebuttal Disclosures	**April 18, 2011**
Plaintiff's 15-day Rebuttal Period Ends	**May 18, 2011**

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.

Pro Se Information

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. Opposer 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.

If applicant 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, applicant 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.

Also, applicant should note that any paper it is required to file 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. These rules are in part two of Title 37 of the previously discussed Code of Federal Regulations.

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/.

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