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

nmt

Mailed: February 24, 2011

Opposition No. 91197584

Johnson & Johnson

v.

Valentino Gitto

**Cheryl S. Goodman, Interlocutory Attorney:**

Applicant's answer was due on January 6, 2011. Inasmuch as applicant did not file an answer by the due date nor did he file a timely request to extend his time to answer, the Board issued a notice of default on January 26, 2011. On February 15, 2011, applicant filed his response to the Board's default notice concurrently with his answer.[1]

In his response, applicant contends that his failure to file a timely answer was due to applicant's inability to speak fluent English and his inability to retain an attorney for this proceeding.

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[1] Applicant's response 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 response is forwarded herewith to counsel for opposer.

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 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 Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556 (TTAB 1991).

The Board finds good cause for setting aside default inasmuch as the reasons for applicant's delay were not willful or in bad faith; applicant has provided a meritorious defense by submission of his answer; and opposer will not be prejudiced by the late submission of the answer, as delay of itself does not constitute prejudice.

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

Discovery, conferencing and disclosure deadlines, as well as trial dates are reset as indicated below:

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| Deadline for Discovery Conference | **3/24/2011** |
| Discovery Opens | **3/24/2011** |
| Initial Disclosures Due | **4/23/2011** |
| Expert Disclosures Due | **8/21/2011** |
| Discovery Closes | **9/20/2011** |
| Plaintiff's Pretrial Disclosures | **11/4/2011** |

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| Plaintiff's 30-day Trial Period Ends | **12/19/2011** |
| Defendant's Pretrial Disclosures | **1/3/2012** |
| Defendant's 30-day Trial Period Ends | **2/17/2012** |
| Plaintiff's Rebuttal Disclosures | **3/3/2012** |
| Plaintiff's 15-day Rebuttal Period Ends | **4/2/2012** |

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 Rules 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

As noted earlier in this order, Trademark Rules 2.119(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney, and proof of such service must be made before the paper will be considered by the Board. Consequently, copies of all papers which applicant may subsequently file in this proceeding, including its answer to the notice of opposition, must be accompanied by a signed statement indicating the date and manner in which such service was made. The statement,

whether attached to or appearing on the paper when filed, will be accepted as prima facie proof of service.

It should also be noted that while Patent and Trademark Rule 11.14 permits any person to represent itself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in an opposition proceeding to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney.

It is recommended that applicant obtain a copy of the latest edition of Title 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice. These rules may be viewed at the USPTO's trademarks page: **http://www.uspto.gov/main/trademarks.htm**. The Board's main webpage (**http://www.uspto.gov/web/offices/dcom/ttab/**) includes information on amendments to the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a web link to the Board's manual of procedure (the TBMP).[2]

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil

Procedure, is expected of all parties before the Board, whether or not they are represented by counsel.

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[2] Applicant may also obtain a hard copy of the latest edition of Title 37 of the Code of Federal Regulations available for a fee from the U.S. Government Printing Office on the World Wide Web at **http://bookstore.gpo.gov**.