

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

Mailed: August 5, 2011

Opposition No. 91198483

PSYBAR LLC

v.

DAVID MAHONY, Ph.D, ABPP

Cheryl Butler, Attorney, Trademark Trial and Appeal Board:

On August 2, 2011, applicant filed a response to the notice of default (issued July 18, 2011) and an answer to the amended notice of opposition (filed May 18, 2011).¹ In his response, applicant indicates that he misunderstood what was required and believed he could rely on his original answer.

A defendant who fails to file its answer in the time set is in default. See Trademark Rule 2.106(a). 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, that is, whether the defendant has shown good cause why default judgment should not be entered against it. See *Paolo's Associates Limited*

¹ Applicant's filings are not accompanied by proof of service on opposer. Trademark Rule 2.119. See also TBMP § 113 (3d ed. 2011) for a further discussion of the service requirement and TBMP § 113.03 for an example of a certificate of service.

In order to expedite matters, opposer is referred to <http://ttabvue.uspto.gov/ttabvue/v?pno=91198483&pty=OPP&eno=11> for copies of the relevant documents.

Partnership v. Paolo Bodo, 21 USPQ2d 1899 (Comm'r 1990); and *Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556 (TTAB 1991). Moreover, because the law favors deciding cases on their merits, the Board is reluctant to grant judgments of default and tends to resolve all doubts by setting aside default. See *Paolo's Associates Limited Partnership, supra*.

For good cause shown, the notice of default is discharged. See also Trademark Rule 2.127(a). Applicant's answer is noted and entered.

Dates are reset as follows:

Discovery Opens	8/14/2011
Initial Disclosures Due	9/13/2011
Expert Disclosures Due	1/11/2012
Discovery Closes	2/10/2012
Plaintiff's Pretrial Disclosures	3/26/2012
Plaintiff's 30-day Trial Period Ends	5/10/2012
Defendant's Pretrial Disclosures	5/25/2012
Defendant's 30-day Trial Period Ends	7/9/2012
Plaintiff's Rebuttal Disclosures	7/24/2012
Plaintiff's 15-day Rebuttal Period Ends	8/23/2012

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.
