

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

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Mailed: October 26, 2011

Opposition No. 91198718
(parent case)

William Quiqley
v.
John Theofilos

Opposition No. 91201092

William Quigley
v.
T-Squad, LLC

By the Board:

Consolidation

Opposer's joint motion to consolidate, filed October 17, 2011 in both proceedings, is granted.¹ Trademark Rule 2.127(a); TBMP § 511 (3d ed. 2011). Opposition Nos. 91198718 and 91201092 are hereby consolidated.

The consolidated cases may be presented on the same record and briefs. See TBMP § 511 (3d ed. 2011); see also *Hilson Research Inc. v. Society for Human Resource Management*, 26 USPQ2d 1423 (TTAB 1993); *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989).

¹ Opposer's change of correspondence information, filed October 21, 2011 in Opposition No. 91201092, is noted and entered.

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The Board proceeding file will be maintained in **Opposition No. 91198718**, designated as the **"parent case."** From this point on, the parties are to file a single copy of all motions and papers **in the parent case only**. All motions and papers filed **must caption both of the consolidated oppositions**, listing and identifying the **"parent case" first** (see caption above).

Despite being consolidated, each proceeding retains its separate character. The decision on the consolidated cases shall take into account any differences in the issues raised by the respective pleadings, and a copy of the decision shall be filed in each proceeding.

Default judgment

In Opposition No. 91201092, opposer moved for default judgment against applicant T-Squad, LLC under Fed. R. Civ. P. 55, on September 28, 2011, based on applicant's failure to answer. The motion has been fully briefed.

The standard for determining whether default judgment should be entered for failure to timely answer is the Fed. R. Civ. P. 55(c) standard, namely, whether a defendant has shown good cause why judgment by default should not be entered against it. See TBMP § 312.01 (3d ed. 2011). 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

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lacking, and where the defendant has a meritorious defense. *See Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556 (TTAB 1991).

While the determination of whether judgment by default should be entered lies within the Board's discretion, it is the policy of the law to decide cases on their merits, and the Board prefers to determine the issue of continued registrability on the merits of the claims and defenses brought before it. See TBMP § 312.02 (3d ed. 2011).

T-Squad, LLC's answer was due by September 19, 2011. In response to opposer's motion, T-Squad, LLC filed a brief indicating, inter alia, that it inadvertently did not calendar the deadline for filing an answer, and that upon discovering this counsel prepared, but erroneously filed in Opposition No. 91198718, an answer on September 26, 2011. With its response, T-Squad, LLC simultaneously filed a copy of the referenced answer.

A review of the record indicates that T-Squad, LLC filed its answer seven days after the due date therefor, a filing which, although untimely, does not pose a significant delay. In substance, said answer denies several of the salient allegations stated in the notice of opposition, and seeks to set forth a meritorious defense to each of the grounds for opposition, as well as affirmative defenses. Moreover, opposer has not articulated any severe or specific

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prejudice which it will endure or expects to endure as a result of the delay in the filing of the answer.

In view thereof, and having considered all of the circumstances presented, the Board finds that applicant T-Squad, LLC has demonstrated good cause to set aside its default. Accordingly, its default is hereby set aside, and opposer's motion is denied.

T-Squad, LLC's late-filed answer, filed in Opposition No. 91201092 on October 6, 2011, is accepted as its pleading therein.

Schedule

Upon consolidation, the Board will reset dates for the consolidated proceeding, usually by adopting the dates as set in the most recently instituted of the proceedings being consolidated. Here, the Board notes that the deadline for the discovery conference, as set in the more recently instituted proceeding, Opposition No. 91201092, passed during the pendency of the motion for default judgment and motion to consolidate. In view thereof, to accommodate both proceedings, and so as not to prejudice either party, conferencing, discovery and trial dates for the now consolidated proceedings are reset as follows:

Deadline for Discovery Conference	12/2/2011
Discovery Opens	12/2/2011
Initial Disclosures Due	1/1/2012
Expert Disclosures Due	4/30/2012

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Discovery Closes	5/30/2012
Plaintiff's Pretrial Disclosures due	7/14/2012
Plaintiff's 30-day Trial Period Ends	8/28/2012
Defendant's Pretrial Disclosures due	9/12/2012
Defendant's 30-day Trial Period Ends	10/27/2012
Plaintiff's Rebuttal Disclosures due	11/11/2012
Plaintiff's 15-day Rebuttal Period Ends	12/11/2012

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.