

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

gcp

Mailed: October 13, 2011

Opposition No. 91199905

Dallas Manufacturing Co.,
Inc.

v.

IMJ Marketing Inc.

By the Trademark Trial and Appeal Board:

The Board instituted this proceeding on May 19, 2011, making applicant's answer due by June 28, 2011. Applicant did not file an answer by such date nor did it file a timely motion to further extend its time to answer. In view thereof, the Board issued a notice of default to applicant on July 18, 2011 requiring applicant to show cause why judgment should not be entered against applicant.

On August 16, 2011, applicant filed its answer but did explain why its answer was not timely filed. Accordingly, by order dated August 16, 2011, the Board required applicant to explain why it filed a late answer. Applicant's copy of the Board's August 16, 2011 order was returned by the U.S. Postal Service as undeliverable. The Board was able to obtain an updated correspondence address for applicant and re-issued its August 16, 2011 order on September 22, 2011.

On October 12, 2011, applicant filed a response to the Board's August 16, 2011 order. In its response, applicant maintains that its failure to file timely its answer to the notice of opposition was due to a docketing error on the part of applicant's counsel.

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).

In this case, the Board finds that opposer is not prejudiced by applicant's approximate two month filing and, by filing an answer which denies the fundamental allegations in the notice of opposition, applicant has asserted a meritorious defense to the notice of opposition. Moreover, the Board finds that the reasons for applicant's delay were not willful or in bad faith, but unintentional and excusable. In view of the foregoing, the notice of default is hereby discharged and applicant's answer is noted and accepted.

Proceedings are resumed. Trial dates are reset as follows:

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| Deadline for Discovery Conference | 11/12/2011 |
| Discovery Opens | 11/12/2011 |
| Initial Disclosures Due | 12/12/2011 |
| Expert Disclosures Due | 4/10/2012 |
| Discovery Closes | 5/10/2012 |
| Plaintiff's Pretrial Disclosures | 6/24/2012 |
| Plaintiff's 30-day Trial Period Ends | 8/8/2012 |
| Defendant's Pretrial Disclosures | 8/23/2012 |
| Defendant's 30-day Trial Period Ends | 10/7/2012 |
| Plaintiff's Rebuttal Disclosures | 10/22/2012 |
| Plaintiff's 15-day Rebuttal Period Ends | 11/21/2012 |

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.