

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

MBA

Mailed: December 8, 2011

Opposition No. 91201218

Redbox Automated Retail, LLC

v.

Stanley Lee Barnes d/b/a Red
Box Tickets USA, LLC

Michael B. Adlin, Interlocutory Attorney:

On November 10, 2011, the Board issued an order granting opposer's consented motion to reopen the deadline to answer, and allowing applicant until November 26, 2011 to respond to the October 19, 2011 notice of default. On November 23, 2011, applicant filed a motion to set aside default along with a [proposed] answer to the notice of opposition, which is construed as a general denial of the allegations in opposer's pleading. In its motion, applicant essentially claims that its failure to timely answer was inadvertent, and the result of the October 12, 2011 motion "crossing in the mail" with the notice of default.

Under Fed. R. Civ. P. 55(c), default may be set aside "for good cause shown." As a general rule, good cause to set aside an applicant's default will be found where the applicant's delay has not been willful or in bad faith,

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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).

Insofar as applicant's apparent failure to timely answer the notice of opposition was not willful or in bad faith, opposer will not suffer prejudice given that this proceeding is in its earliest stages and it filed the consent motion to extend, and applicant's proposed answer establishes that applicant has a meritorious defense, the Board's notice of default is hereby set aside. Applicant's proposed answer is accepted and is now applicant's operative pleading herein. Disclosure, discovery, trial and other dates are reset as follows:

Deadline for Discovery Conference	December 21, 2011
Discovery Opens	December 21, 2011
Initial Disclosures Due	January 20, 2012
Expert Disclosures Due	May 19, 2012
Discovery Closes	June 18, 2012
Plaintiff's Pretrial Disclosures	August 2, 2012
Plaintiff's 30-day Trial Period Ends	September 16, 2012

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Defendant's Pretrial Disclosures	October 1, 2012
Defendant's 30-day Trial Period Ends	November 15, 2012
Plaintiff's Rebuttal Disclosures	November 30, 2012
Plaintiff's 15-day Rebuttal Period Ends	December 30, 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 Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.
