

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

mc/em

Mailed: February 6, 2012

Opposition No. 91202391

Altadis U.S.A. Inc.

v.

TMS International Corp

**Robert H. Coggins,  
Interlocutory Attorney:**

On December 30, 2011, applicant was allowed time in which to show cause why judgment should not be entered against it in accordance with Fed. R. Civ. P. 55(b) for applicant's failure to timely answer the notice of opposition. Now before the Board are applicant's response (filed January 12, 2012) and concurrently filed answer.

By way of the response, applicant states that its failure to file a timely answer was due to its busy holiday sales schedule combined with its desire to weigh the merits of the case with the cost of defending against a much larger corporation.

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: "The court may set

aside an entry of default for good cause shown..." As a general rule, good cause to set aside a defendant's default will be found by the Board where the defendant's delay has not been willful or in bad faith, when prejudice to the plaintiff is lacking, and where the defendant 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 enter judgment by default since it is the policy of the law to decide cases on their merits. See TBMP § 312.02 (3d ed. rev. 2011).

Default Set Aside

The Board is persuaded that applicant's response establishes good cause to set aside the notice of default. Firstly, there is no evidence that applicant's failure to timely answer was the result of bad faith, willful action, or gross neglect; instead, applicant was distracted with a busy holiday sales schedule. Secondly, the Board can see no prejudice to opposer, other than a short delay which does not rise to any appreciable level. Thirdly, without evaluating the merits of the case, the Board finds that applicant has a meritorious defense inasmuch as the answer provides a reasonable response to the notice of opposition.

In view thereof, the order to show cause why default should not be entered is hereby discharged, and the notice

of default is set aside. Applicant's concurrently filed answer is accepted and made of record in this proceeding.

Schedule

Dates are reset as follows:

Deadline for Discovery Conference	3/4/2011
Discovery Opens	3/4/2011
Initial Disclosures Due	4/3/2011
Expert Disclosures Due	8/1/2011
Discovery Closes	8/31/2011
Plaintiff's Pretrial Disclosures	10/15/2011
Plaintiff's 30-day Trial Period Ends	11/29/2011
Defendant's Pretrial Disclosures	12/14/2011
Defendant's 30-day Trial Period Ends	1/28/2012
Plaintiff's Rebuttal Disclosures	2/12/2012
Plaintiff's 15-day Rebuttal Period Ends	3/13/2012

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.