

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

RK/am

Mailed: May 17, 2012

Opposition No. 91203951

Shure Incorporated

v.

U Flakey Entertainment

**Yong Oh (Richard) Kim, Interlocutory Attorney:**

Answer was due in this case on April 1, 2012. Applicant failed to timely file an answer or a motion to further extend its time to answer. Accordingly, the Board issued a notice of default to applicant on April 19, 2012, allowing applicant thirty days to show cause why judgment should not be entered against it. On May 7, 2012, applicant simply filed an answer without explanation as to why its answer was not timely filed.<sup>1</sup>

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<sup>1</sup> Applicant's filing fails to indicate proof of service on opposer, as required by Trademark Rule 2.119. In order to expedite this matter, opposer is referred to <http://ttabvue.uspto.gov/ttabvue/v?pno=91203951&pty=OPP&eno=5> to view a copy of the filing. Notwithstanding, strict compliance with Trademark Rule 2.119 is required by applicant in all future papers filed with the Board.

For future reference, a suggested format for the certificate of service is provided below:

I hereby certify that a true and complete copy of the foregoing (*insert title of submission*) has been served on (*insert name of opposing counsel or party*) by mailing said copy on (*insert date of mailing*), via First Class Mail, postage prepaid (*or insert other appropriate method of delivery*) to:

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". 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 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 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).

By virtue of its answer which denies the fundamental allegations in the notice of opposition, it appears that applicant has a meritorious defense. Further, given the early stages of this proceeding, there is nothing to suggest that opposer has been prejudiced by the late filing. However, absent any explanation as to why applicant did not timely file its answer, the Board cannot determine if the circumstances warrant setting aside applicant's default. Accordingly, the

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(set out name and address of opposing  
counsel or party)

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Signature

See TBMP § 113 (3d ed. 2011).

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Board's determination of whether to enter default judgment in this proceeding is **DEFERRED** and applicant is allowed until **THIRTY DAYS** from the mailing date of this order to explain why it failed to timely file its answer or an extension of time to file its answer, failing which judgment by default will be entered against applicant.

Proceedings herein are otherwise **SUSPENDED**.

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