

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

VW

Mailed: October 12, 2012

Opposition No. 91205089

Ashland Licensing and
Intellectual Property LLC

v.

Total Import Solutions, Inc.

Cheryl S. Goodman, Interlocutory Attorney:

As background, answer was due, as last extended, on August 17, 2012. On September 18, 2012, the Board issued notice of default for failure of applicant to file an answer or to extend its time to answer, allowing applicant time to show cause why default judgment should not be entered against it.

On October 5, 2012, applicant filed a response to the notice of default.¹

¹ Applicant's filing does not include proof of service of a copy thereof on opposer's counsel, as strictly required by Trademark Rule 2.119(a). The Board may, in its discretion, decline to consider any motion or paper filed in a proceeding which does not include proof of service. See TBMP § 113.02 (3d ed. rev. 2012). To expedite this matter, a copy of this filing is provided to opposer by accessing the following link <http://ttabvue.uspto.gov/ttabvue/ttabvue-91205089-OPP-7.pdf>.

Applicant states that it did file a motion to extend via ESTTA on August 9, 2012 and obtained opposer's consent. Applicant has provided a copy of "the receipt generated from the TTAB's system."

Good cause for discharging default is generally found if (1) the delay in filing is not the result of willful conduct or gross neglect, (2) the delay will not result in substantial prejudice to the opposing party, and (3) the defendant has a meritorious defense. *Fred Hayman Beverly Hills Inc. v. Jacques Bernier Inc.*, 21 USPQ2d 1556 (TTAB 1991). When considering these factors, the Board keeps in mind that the law strongly favors determination of cases on their merits. *Paolo's Associates Ltd. Partnership v. Bodo*, 21 USPQ2d 1899, 1902 (Comm'r Pat. 1990).

A review of applicant's exhibit to the response to the notice of default shows that the parties agreed to an extension until November 15, 2012 due to the parties' settlement discussions. However, it is unclear whether the ESTTA extension request was actually submitted as the paper that applicant has provided is the validation screen which appears before submission of the motion. This paper is not the actual ESTTA receipt which includes a tracking number and filing date which is generated after submission of the motion. *See Vibe Records Inc. v. Vibe Media Group LLC*, 88

USPQ2d 1280, 1282 (TTAB 2008). Additionally, applicant should receive an e-mail acknowledge of receipt, with tracking information.² *Id.*

Nonetheless, the Board finds that good cause has been shown as applicant was not willfully ignoring the matter and believed that its time to answer was extended. In addition, opposer will not be prejudiced by setting aside default as the parties are currently attempting to settle the matter and opposer agreed to the extended time to answer.

In view thereof, entry of default is set aside, and dates are reset to reflect the parties' agreement to extend applicant's time to answer to November 15, 2012.

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|---|------------|
| Time to Answer | 11/15/2012 |
| Deadline for Discovery Conference | 12/15/2012 |
| Discovery Opens | 12/15/2012 |
| Initial Disclosures Due | 1/14/2013 |
| Expert Disclosures Due | 5/14/2013 |
| Discovery Closes | 6/13/2013 |
| Plaintiff's Pretrial Disclosures Due | 7/28/2013 |
| Plaintiff's 30-day Trial Period Ends | 9/11/2013 |
| Defendant's Pretrial Disclosures Due | 9/26/2013 |
| Defendant's 30-day Trial Period Ends | 11/10/2013 |
| Plaintiff's Rebuttal Disclosures Due | 11/25/2013 |
| Plaintiff's 15-day Rebuttal Period Ends | 12/25/2013 |

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits,

² There is no tracking information on the exhibit which contains the validation screen to enable the Board to locate the lost filing.

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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.