

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

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Mailed: December 2, 2013

Opposition No. 91211193

Home Box Office, Inc.

v.

Antonio M. Wade, Sr.

By the Board:

This proceeding is before the Board for consideration of applicant's contested response (filed August 26, 2013) to the Board with respect to the notice of default issued on August 14, 2013 pursuant to Fed. R. Civ. P. 55(a).¹

Analysis

The standard for determining whether default judgment should be entered for failure to timely answer is the Fed. R. Civ. P. 55(c) standard, namely, whether a defendant has shown good cause why judgment by default should not be entered against it. See TBMP § 312.01 (2013). As a general

¹ Applicant's response does not include proof of service of a copy thereof on counsel for opposer, as is required pursuant to Trademark Rules 2.119(a) and (b). Any and all papers filed in this proceeding must include a signed statement indicating the date and manner in which such service was made. The statement should take the form of a certificate of service which must be signed and dated, and may read as follows (*see* TBMP § 113.03 (2013)):

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

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 to the action. *See, e.g., DeLorme Publishing Co v. Eartha's Inc.*, 60 USPQ2d 1222, 1224 (TTAB 2000); *Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556, 1557 (TTAB 1991). As a general rule, it is the policy of the law to decide cases on their merits, as appropriate. *See* TBMP § 312.02 (2013).

In response to the Board's show cause order, applicant states that he simply lost track of the filing deadline, has not lost interest in registering his mark, and believes his mark is not connected with and would not be mistakenly identified with opposer's marks.

In opposition, opposer asserts, *inter alia*, that applicant's response contains no justification or good cause for his failure to answer, that the failure to respond is sufficient to find that applicant acted willfully, and that applicant has not filed an answer or shown that he has a meritorious defense. Opposer requests that judgment be entered against applicant and the opposition be sustained.

Upon thorough review of the record thus far, the record does not suggest evasive conduct, bad faith or gamesmanship on applicant's part, and does not indicate that the failure to answer by the due date therefor was the result of

delivery) to: (set out name and address of opposing counsel or party).

willful behavior or deliberate inattentiveness to this proceeding. Applicant's written response is very brief and lacking in detail. Nevertheless, applicant appears to now be fully aware of his obligation to file an answer, and briefly sets forth substantive matters which, although not considered at this time, do indicate that he has and wishes to set forth a meritorious defense to set forth. The response to the Board, albeit brief, indicates that applicant seeks to defend this proceeding and to set forth a plausible and meritorious defense to opposer's allegations.

Opposer does not articulate any specific prejudice that it has endured or unreasonable delay or consequence thereof that it will bear as a result of applicant's failure to answer by the due date.

In view of these circumstances, and on balance, the Board finds that applicant has demonstrated the requisite good cause to set aside his default. Accordingly, applicant's default is hereby set aside, and judgment will not be entered against applicant on that basis.

Schedule

Proceedings are resumed. Applicant is allowed until thirty (30) days from the mailing date of this order in which to file and serve his answer to the notice of opposition.

Conferencing, disclosure, discovery and trial dates are hereby reset as follows:

Deadline for Required Discovery	
Conference	1/31/2014
Discovery Opens	1/31/2014

Initial Disclosures Due	3/2/2014
Expert Disclosures Due	6/30/2014
Discovery Closes	7/30/2014
Plaintiff's Pretrial Disclosures	9/13/2014
Plaintiff's 30-day Trial Period Ends	10/28/2014
Defendant's Pretrial Disclosures	11/12/2014
Defendant's 30-day Trial Period Ends	12/27/2014
Plaintiff's Rebuttal Disclosures	1/11/2015
Plaintiff's 15-day Rebuttal Period Ends	2/10/2015

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 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.

Information for pro se party

A party may represent itself in this *inter partes* proceeding. However, while Patent and Trademark Rule 11.14 permits any entity to represent itself, it is strongly advisable for persons who are not acquainted with the technicalities of the procedural and substantive law involved in *inter partes* proceedings before the Board to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney, and as the impartial decision maker, the Board may not provide legal advice, though it may provide information as to purely procedure matters.

Any party who does not retain counsel should become familiar with the rules governing this proceeding, and may access useful legal resources, such as the Trademark Trial and Appeal Board Manual of Procedure (TBMP) and the Trademark Rules of Practice, from the Board's web page at <http://www.uspto.gov>. Also available are links to TTABVUE, where one can view filings, proceeding history and status at <http://ttabvue.uspto.gov/ttabvue>, and to ESTTA, the Board's electronic filing system at <http://estta.uspto.gov>. All parties are encouraged to use ESTTA to submit filings. Furthermore, many Federal Rules of Civil Procedure govern the conduct of this proceeding.

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is required of all parties, whether or not they are represented by counsel. *See McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, n.2 (TTAB 2006).

As noted above, Trademark Rules 2.119(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served on the attorney for the other party, or on the party if there is no attorney, and proof of such service must be made before the paper will be considered by the Board.

The Board's June 19, 2013 order instituting this proceeding provides a vast amount of information regarding the parties' obligations and the manner in which this proceeding shall be conducted.