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

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Mailed: August 20, 2014

Opposition No. **91214779**

Combe Incorporated

v.

Marke Enterprises, LLC

Yong Oh (Richard) Kim, Interlocutory Attorney:

Per the Board's institution order of February 5, 2014, an answer was due on March 17, 2014. As neither an answer nor an extension of time to file an answer was filed by applicant by that deadline, the Board issued a notice of default on April 1, 2014. On April 30, 2014, applicant filed a motion to set aside the notice of default.[1] The motion is fully briefed.

The standard for determining whether default judgment should be entered against applicant for its failure to timely file an answer to the notice of opposition is found in Fed. R. Civ. P. 55(c) which states that "[t]he court may set aside an entry of default for good cause." Good cause is generally found where "(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

[1] Applicant counsel's notice of withdrawal from representation (filed April 30, 2014) is noted. Taken together with the concurrent filing of applicant's motion to set

party, and (3) the defendant has a meritorious defense." *DeLorme Publishing Co. v. Eartha's Inc.*, 60 USPQ2d 1222, 1223 (TTAB 2000).

Taking each of these points in reverse order, the showing of a meritorious defense does not require an evaluation of the merits of the case. All that is required is a plausible response to the allegations in the complaint. *See* TBMP § 312.02. Here, although applicant did not file an answer as part of its original motion, it did file an answer as part of its reply denying the salient allegations of the notice of opposition and which the Board has considered. Applicant has, therefore, shown its intent to defend itself in this opposition and that it has a meritorious defense to opposer's claims. *See DeLorme Publishing Co. v. Eartha's Inc.*, 60 USPQ2d at 1224.

As to the question of prejudice, an answer was due on March 17, 2014, a notice of default issued on April 1, 2014, and an answer was filed on June 4, 2014, as part of applicant's briefing on its motion to set aside the notice of default. There is nothing in the record to suggest, and opposer does not otherwise contend, that it has been substantially prejudiced by the near two and a half month delay in applicant's filing of its answer.

Finally, the Board does not find that applicant's delay in filing its answer was the result of willful conduct or gross negligence. Shortly after the institution of this proceeding, applicant and its counsel discussed and determined that applicant would be unable to afford counsel's fees to defend

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aside the notice of default by applicant's new counsel, prior counsel's withdrawal is granted and applicant's correspondence information is accordingly updated.

and try this matter and agreed that applicant would seek new counsel. Although two months passed since prior counsel's withdrawal (as confirmed by email dated February 18, 2014) and applicant's retention of new counsel on April 25, 2014, the Board does not find willfulness or gross negligence on the part of applicant in failing to timely respond or to extend its time to respond to the notice of opposition during the time it sought out new counsel.

Further, because the law favors deciding cases on their merits, the Board is reluctant to grant judgments of default and tends to resolve all doubts by setting aside default, particularly when a proceeding is at such an early stage as is the case here. *See Paolo's Associates Limited Partnership v. Paolo Boda*, 21 USPQ2d 1899 (Comm'r 1990). In view thereof, applicant's motion is **GRANTED** and the notice of default is hereby **SET ASIDE**. Applicant's proposed answer is **ACCEPTED** and is now applicant's operative pleading herein. Dates are **RESET** as follows:

Deadline for Discovery Conference	**9/26/2014**
Discovery Opens	**9/26/2014**
Initial Disclosures Due	**10/26/2014**
Expert Disclosures Due	**2/23/2015**
Discovery Closes	**3/25/2015**
Plaintiff's Pretrial Disclosures Due	**5/9/2015**
Plaintiff's 30-day Trial Period Ends	**6/23/2015**
Defendant's Pretrial Disclosures Due	**7/8/2015**
Defendant's 30-day Trial Period Ends	**8/22/2015**
Plaintiff's Rebuttal Disclosures Due	**9/6/2015**
Plaintiff's 15-day Rebuttal Period Ends	**10/6/2015**

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 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.

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