

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500

VV

Mailed: October 29, 2014

Opposition No. 91216932

Rapid Funding LLC

v.

Rapid Capital Funding LLC

**Eric McWilliams, Supervisory Paralegal:**

On August 12, 2014, the Board issued an order to show cause for applicant's failure to file an answer or otherwise plead in this proceeding. In response, applicant filed on August 20, 2014 an answer and a motion to set aside the default. Opposer has not responded to applicant's motion.

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: "for good cause shown the court may set aside an entry of default." As a general rule, a 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 Barnier, Inc.*, 21 USPQ2d 1556 (TTAB 1991).

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In its response, the applicant through and by its counsel states that applicant was never actually served with the opposition pleading. Additionally, applicant's while admitting inadvertent mistake in calendaring the response due for 60 days rather than 40 days, state that he was unaware of the notice of default issued by the Board on August 12, 2014 until returning from vacation. The applicant further states that it has since received the opposition pleading and is filing its answer with the motion to set aside a notice of default and a leave to file late answer..

The Board is persuaded that the forgoing reasons constitute good cause to set aside applicant's notice of default. The Board finds that there is no evidence that the applicant's failure to timely file its answer to the notice of opposition was willful or the result of gross negligent. The Board further notes that applicant has attempted to set forth a meritorious defense, by way of its answer which was filed with its motion. Finally the Board finds that opposer has conceded to the fact that it will not be prejudiced by not filing a response to applicant's motion to set aside the notice of default.

In view thereof, the order to show cause why default judgment should not be entered is discharged and a notice of default issued on August 20, 2014 is hereby set aside. The conferencing, disclosure, discovery, and trial dates are reset as follows:

Time to Answer	<b>11/27/2014</b>
Deadline for Discovery Conference	<b>12/27/2014</b>
Discovery Opens	<b>12/27/2014</b>
Initial Disclosures Due	<b>1/26/2015</b>

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Expert Disclosures Due	<b>5/26/2015</b>
Discovery Closes	<b>6/25/2015</b>
Plaintiff's Pretrial Disclosures	<b>8/9/2015</b>
Plaintiff's 30-day Trial Period Ends	<b>9/23/2015</b>
Defendant's Pretrial Disclosures	<b>10/8/2015</b>
Defendant's 30-day Trial Period Ends	<b>11/22/2015</b>
Plaintiff's Rebuttal Disclosures	<b>12/7/2015</b>
Plaintiff's 15-day Rebuttal Period Ends	<b>1/6/2016</b>

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.