

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: April 7, 2015

Opposition No. 91218830

Kaviari SAS

v.

Dieter Lieblein<sup>1</sup>

**Eric McWilliams, Supervisory Paralegal:**

On December 10, 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, on December 22, 2014 (supplemented on December 23, 2014), Applicant filed a motion to extend time both of which are noted.<sup>2</sup> 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 and entry of default." 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

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<sup>1</sup> Applicant's change of address (filed December 23, 2014) is noted. The Board's records have been updated to reflect Applicant's current address.

<sup>2</sup> The motion to extend time was not served as required by Trademark Rule 2.119. The Board notified Applicant of the service requirement in an order dated February 13, 2015, and served a copy of the December 22, and 23, 2014 motions on Opposer.

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).

In its response, Applicant states that its failure to timely respond was due to it not receiving notice of the Board's institution of this proceeding because of an incomplete address in the Board's records. Applicant has since updated its address with the Board.

The Board is persuaded that the foregoing reason constitutes good cause to set aside Applicant's notice of default. First, there is no evidence that Applicant's failure to timely answer the notice of opposition was either willful or the result of gross neglect. Second, the Board can see no prejudice to Opposer, other than delay, which the Board would not characterize as significant, that would result from accepting Applicant's late-filed answer. Finally, the Board finds that Applicant has attempted to set forth a meritorious defense, by way of its answer which was filed on March 1, 2015.<sup>3</sup>

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

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<sup>3</sup> Applicant's answer to the notice of opposition fails to indicate proof of service on Opposer's counsel, as required by Trademark Rule 2.119. In order to expedite this matter, a copy of the answer is forwarded herewith to Opposer's counsel.

Deadline for Discovery Conference	<b>5/3/2015</b>
Discovery Opens	<b>5/3/2015</b>
Initial Disclosures Due	<b>6/2/2015</b>
Expert Disclosures Due	<b>9/30/2015</b>
Discovery Closes	<b>10/30/2015</b>
Plaintiff's Pretrial Disclosures	<b>12/14/2015</b>
Plaintiff's 30-day Trial Period Ends	<b>1/28/2016</b>
Defendant's Pretrial Disclosures	<b>2/12/2016</b>
Defendant's 30-day Trial Period Ends	<b>3/28/2016</b>
Plaintiff's Rebuttal Disclosures	<b>4/12/2016</b>
Plaintiff's 15-day Rebuttal Period Ends	<b>5/12/2016</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.