

GCP

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

Mailed: July 13, 2015

Opposition No. 91221547

J.C. Newman Cigar Company

v.

Pure Cigar Group Incorporated

By the Trademark Trial and Appeal Board:

The Board instituted this proceeding on April 17, 2015, making Applicant's answer due by May 27, 2015. Applicant did not file an answer or otherwise respond by the due date. In view thereof, the Board issued a default notice on June 11, 2015.

On June 11, 2015, Applicant filed its late answer to the notice of opposition concurrently with a motion to set aside its default and accept its late filed answer.¹

In support of its motion, Applicant maintains that its failure to file timely an answer to the notice of opposition was the result of miscommunication with its prior counsel of record. Specifically, Applicant contends that its principal spends most of his time in the Dominican Republic and did not timely receive certain mailings that were sent to his Miami, Florida address by his previous counsel of record.

¹ Appearance of new counsel on behalf of Applicant and Applicant's change of correspondence address filed on June 11, 2015 is noted. Board records have been updated accordingly.

Opposition No. 91221547

Additionally, Applicant maintains that certain emails from Applicant's prior counsel were automatically directed to Applicant's email spam folder and Applicant did not become aware of such emails until June 11, 2015.

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, 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 defendant has a meritorious defense. *See Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556 (TTAB 1991).

In this case, the Board finds that Opposer is not prejudiced by Applicant's approximate two-week late filing and, by filing an answer which denies the fundamental allegations in the notice of opposition, Applicant has asserted a meritorious defense to the notice of opposition. Moreover, the Board finds that the reasons for Applicant's delay were not willful or in bad faith but due to miscommunication with its prior counsel.

In view of the foregoing, Applicant's motion to accept its late answer is **GRANTED**, default is hereby set aside and Applicant's answer to the notice of opposition filed on June 11, 2015 is noted and accepted.

Trial Schedule

Discovery, conferencing and disclosure deadlines, as well as trial dates are reset as indicated below:

Opposition No. 91221547

Deadline for Discovery Conference	7/31/2015
Discovery Opens	7/31/2015
Initial Disclosures Due	8/30/2015
Expert Disclosures Due	12/28/2015
Discovery Closes	1/27/2016
Plaintiff's Pretrial Disclosures Due	3/12/2016
Plaintiff's 30-day Trial Period Ends	4/26/2016
Defendant's Pretrial Disclosures Due	5/11/2016
Defendant's 30-day Trial Period Ends	6/25/2016
Plaintiff's Rebuttal Disclosures Due	7/10/2016
Plaintiff's 15-day Rebuttal Period Ends	8/9/2016

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.