

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

MW

Mailed: February 10, 2016

Opposition No. 91221689

3M Company

v.

GabRy, Inc.

By the Trademark Trial and Appeal Board:

Applicant's answer in this case was due on August 7, 2015 in accordance with the Board's July 8, 2015 order granting Applicant's consented motion to extend. On September 16, 2015, the Board issued a notice of default in light of Applicant's failure to file an answer or otherwise plead in response to Opposer's notice of opposition within the answer deadline as reset by the Board. Applicant responded to the notice of default on October 16, 2015 and requested that its late-filed answer be accepted. On November 4, 2015, Opposer filed a brief in opposition to Applicant's motion.

In response to the notice of default, Applicant's states that the parties have been in settlement discussions and have been close to resolving the issues between them. However, Applicant contends that is was unable to file a third extension request via the Board's online electronic filing system (ESTTA) after two previous consented motions for extension were granted by the Board,.

Opposer argues that the notice of default should not be set aside because “it was Applicant’s obligation to comply with the deadline” for filing the answer despite not having Opposer’s consent to a third extension of time and not being able to file the request electronically.¹ Opposer further contends that Applicant’s excuse does not explain Applicant’s delay in addressing the issue once the August 7, 2015 deadline passed.

The Board will set aside entry of default if a defendant who has failed to file a timely answer to the complaint responds to a notice of default by filing a satisfactory showing of good cause why default judgment should not be entered against it. *See* Fed. R. Civ. P. 55(c); TBMP §312.02 (2015). Good cause for discharging default is generally found if (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 party, and (3) the defendant has a meritorious defense. *Fred Hayman Beverly Hills Inc. v. Jacques Bernier Inc.*, 21 USPQ2d 1556 (TTAB 1991). When considering these factors, the Board keeps in mind that the law strongly favors determination of cases on their merits. *Paolo’s Associates Ltd. Partnership v. Bodo*, 21 USPQ2d 1899, 1902 (Comm’r Pat. 1990); *see also Int’l Painters and Allied Union and Indus. Pension Fund v. H.W. Ellis Painting Co., Inc.*, 288 F. Supp.2d 22, 25 (D.D.C. 2003).

While Applicant may have been negligent in failing to contact the Board regarding its failure to file an answer or request an additional extension, we cannot

¹ 10 TTABVUE at 3.

find that Applicant's failure to timely file its answer rises to the level of willful or bad faith conduct or gross neglect. In addition, Opposer has not argued that it would suffer even minimal prejudice if the Board accepts Applicant's late filed answer. *See, e.g., Paolo's Associates L.P. v. Bodo*, 21 USPQ2d 1899, 1904 (Comm'r 1990).

Finally, Applicant has filed its answer to the notice of opposition with its response. Inasmuch as Applicant's answer responds to the allegations in the petition for cancellation and is not frivolous, Applicant has made a meritorious defense. *See Fred Hyman Beverly Hills Inc.*, 21 USPQ2d at 1557.

In view of thereof and considering the Board's preference for a decision on the merits, the Board finds good cause exists to set aside default.

Accordingly, the notice of default is hereby set aside and Applicant's motion to accept its late answer is **granted**.

Proceedings are resumed. Disclosure, discovery and trial dates are reset as follows:

Deadline for Discovery Conference	3/11/2016
Discovery Opens	3/11/2016
Initial Disclosures Due	4/10/2016
Expert Disclosures Due	8/8/2016
Discovery Closes	9/7/2016
Plaintiff's Pretrial Disclosures	10/22/2016
Plaintiff's 30-day Trial Period Ends	12/6/2016
Defendant's Pretrial Disclosures	12/21/2016
Defendant's 30-day Trial Period Ends	2/4/2017
Plaintiff's Rebuttal Disclosures	2/19/2017
Plaintiff's 15-day Rebuttal Period Ends	3/21/2017

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.