

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
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GCP

Mailed: December 16, 2015

Opposition No. 91224132 (**Parent Case**)  
Opposition No. 91224133

*eHarmony, Inc.*

v.

*Kathleen Kvalvik*

**By the Trademark Trial and Appeal Board:**

It has come to the Board's attention that the above-captioned opposition proceedings involve common questions of law and fact and the parties are the same. When cases involving common questions of law or fact are pending before the Board, the Board may order the consolidation of the cases. *See* Fed. R. Civ. P. 42(a); *see also, Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991) and *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382 (TTAB 1991).

Accordingly, the Board, *sua sponte*, orders the consolidation of the above-captioned proceedings.

In view thereof, Opposition Nos. 91224132 and 91224133 are hereby consolidated.

The consolidated cases may be presented on the same record and briefs. *See Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989)

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and *Hilson Research Inc. v. Society for Human Resource Management*, 26 USPQ2d 1423 (TTAB 1993).

The Board file for these consolidated cases will be maintained in **Opposition No. 91224132** as the "**parent**" case. As a general rule, from this point on only a single copy of any paper or motion should be filed in the parent case of the consolidated proceedings, but that copy should bear both opposition proceeding numbers in its caption. The only exception is that the answer to each notice of opposition must be filed in the respective corresponding proceeding.

The parties are further advised that despite being consolidated, each proceeding retains its separate character. The decision on the consolidated cases shall take into account any differences in the issues raised by the respective pleadings and a copy of the final decision shall be placed in each proceeding file.<sup>1</sup>

In accordance with Board practice, discovery, disclosure and trial dates are reset to conform to the dates latest set in the proceedings that are being consolidated. In this instance, the Board notes that Applicant's answer to each notice of opposition consolidated herein was due on November 9, 2015. Applicant did not file her answer to either notice of opposition by such date nor did she file a timely motion to further extend her time to answer. Instead, Applicant filed her answer to each notice of opposition on November 16, 2015 concurrently with a motion to accept her late-filed answer. On December 7, 2015, Opposer filed a combined response to Applicant's motion accept her late-filed answer and a cross-motion for default judgment in each

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<sup>1</sup> The parties should promptly inform the Board in writing of any other related *inter partes* proceedings. See Fed. R. Civ. P. 42(a).

opposition proceeding consolidated herein. On December 16, 2015, Applicant filed a response to Opposer's motion for default judgment in each of the opposition proceedings.

In support of her motion to accept her late-filed answer, Applicant contends that neither she nor her attorney of record received copies of the Board's September 30, 2015, institution orders which set forth the deadline for filing her answers. Additionally, Applicant maintains that if the Board's institution orders were ever sent by email and were identified as spam mail, the order was not located in Applicant's counsel's spam inbox. Applicant further maintains her late filing was neither intentional nor the result of her or her attorney's negligence or lack of diligence. In view of the foregoing, Applicant requests that the Board accept her late answers and consider said answers in determining the merits of these now consolidated cases.

In response to Applicant's motions to accept her late-filed answer and support of its cross-motions for default judgment, Opposer argues that Applicant has failed to demonstrate the requisite good cause to set aside her default. Specifically, Opposer maintains that it communicated with Applicant regularly in the days leading up to the filing of the notices of opposition, even requesting Applicant's consent for an extension of time which Applicant did not provide. Opposer also contends that Opposer further followed-up with Applicant the day after the oppositions were filed and notified Applicant of the filings. In view of the foregoing, Opposer argues that Applicant was on notice of the oppositions at least as early as October 1, 2015, and

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therefore Applicant was grossly negligent in not filing timely answers by the due date set forth in the Board's institution orders.

### **Decision**

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).

First, the Board finds that Opposer is not prejudiced by Applicant's one week late filings and, by filing answers which deny the fundamental allegations in the notices of opposition, Applicant has asserted a meritorious defenses to each notice. Further, the Board notes that Opposer has failed to demonstrate how Applicant's late filings have prejudiced Opposer in any manner. Moreover, based upon the record, the Board finds that the reasons for Applicant's delay were not willful or in bad faith. Finally, the Board is very reluctant to enter default judgment for failure to file a timely answer, and tends to resolve any doubt on the matter in favor the defendant. TBMP § 312.02 (2015).

In view of the foregoing, Applicant's motions to set aside her default and accept her late-filed answer are **GRANTED**, Applicant's defaults are set aside, Opposer's

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cross-motions for default judgment are **DENIED**, and Applicant's answers filed on November 16, 2015 are noted and accepted.

**Trial Schedule For Consolidated Proceedings**

Trial dates for these now consolidated proceedings, beginning with the deadline for the parties' required discovery conference, are reset as follows:

Deadline for Discovery Conference	<b>1/15/2016</b>
Discovery Opens	<b>1/15/2016</b>
Initial Disclosures Due	<b>2/14/2016</b>
Expert Disclosures Due	<b>6/13/2016</b>
Discovery Closes	<b>7/13/2016</b>
Plaintiff's Pretrial Disclosures Due	<b>8/27/2016</b>
Plaintiff's 30-day Trial Period Ends	<b>10/11/2016</b>
Defendant's Pretrial Disclosures Due	<b>10/26/2016</b>
Defendant's 30-day Trial Period Ends	<b>12/10/2016</b>
Plaintiff's Rebuttal Disclosures Due	<b>12/25/2016</b>
Plaintiff's 15-day Rebuttal Period Ends	<b>1/24/2017</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 the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademarks Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.