

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

CME

Mailed: September 29, 2016

Opposition No. 91227916

ezStorage Corporation

v.

Go-Store Self Storage, LLC

By the Trademark Trial and Appeal Board:

Applicant's answer, as last reset, was due August 25, 2016. 6 and 7 TTABVUE. Accordingly, Applicant's answer, filed August 26, 2016, was one-day late. This case now comes up on Opposer's motion for default judgment, filed August 30, 2016, and Applicant's cross-motion to reopen, filed August 31, 2016.¹ The motions are opposed.

¹ The Board treats Applicant's cross-motion as having been filed the day Applicant filed proof of service of the cross-motion on Opposer. 14 TTABVUE.

Applicant filed separate and duplicate certificates of service for its answer (9 and 13 TTABVUE) and a separate certificate of service for its cross-motion (14 TTABVUE). Applicant failed to file proof that it served its brief in response to Opposer's motion for default judgment. Applicant's practice of filing separate certificates of service has caused confusion and unnecessarily increased the number of docket entries in this proceeding. Applicant is advised that proof of service should be *included* in any filing rather than filed separately.

No consideration has been given to Applicant's response brief because there is no proof that Applicant served the filing on Opposer, but this is inconsequential given that Applicant's response brief and cross-motion are substantially similar. Applicant should have filed one combined response and cross-motion as the issue addressed in both filings is the same.

The Board has considered all of the parties' arguments and presumes the parties' familiarity with the factual bases for their filings, and does not recount the facts or arguments here, except as necessary to explain the decision.

"However the issue [of default] is raised, the standard for determining whether default judgment should be entered against the defendant for its failure to file a timely answer to the complaint is the Fed. R. Civ. P. 55(c) standard." TBMP §§ 312.01 and 508 (2016). Under Fed. R. Civ. P. 55(c), default may be set aside "for good cause." As a general rule, good cause will be found where the defendant's delay is not the result of willful conduct or gross neglect, where prejudice to the plaintiff is lacking, and where the defendant has a meritorious defense. *See Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556, 1557 (TTAB 1991). The determination of whether default judgment should be entered against a party lies within the sound discretion of the Board. In exercising that discretion, the Board must be mindful of the fact that it is the policy of the law to decide cases on their merits. *See Paolo's Assocs. Ltd. P'ship v. Bodo*, 21 USPQ2d 1899, 1902 (Comm'r 1990). Accordingly, the Board is very reluctant to enter a default judgment for failure to file a timely answer, and tends to resolve any doubt on the matter in favor of the defendant. *See id.*

Here, there is no evidence that Applicant's failure to file a timely answer was willful or the result of gross neglect. Rather, Applicant explains that its counsel "confused the deadline of August 25, 2016 with August 26, 2016 at least because the Consent Motion [to extend Applicant's answer deadline] was filed on July 26, 2016.

The extra day in July was not taken into account in remembering and docketing the date.” 11 TTABVUE 2. Moreover, the Board finds that Applicant’s one-day delay in filing its answer will not result in substantial prejudice to Opposer.

Lastly, Applicant’s late-filed answer sets forth a meritorious defense to the notice of opposition. *See Fred Hayman*, 21 USPQ2d at 1557; *see also* TBMP § 312.02 (“The showing of a meritorious defense does not require an evaluation of the merits of the case. All that is required is a plausible response to the allegations in the complaint.”).

In view of the foregoing, Opposer’s motion for default judgment is denied, Applicant’s cross-motion to reopen is granted, and Applicant’s answer, filed August 26, 2016, is accepted and is now Applicant’s operative pleading in this proceeding.

Dates in this proceeding are reset as follows:

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| Deadline for Discovery Conference | 10/27/2016 |
| Discovery Opens | 10/27/2016 |
| Initial Disclosures Due | 11/26/2016 |
| Expert Disclosures Due | 3/26/2017 |
| Discovery Closes | 4/25/2017 |
| Plaintiff’s Pretrial Disclosures Due | 6/9/2017 |
| Plaintiff’s 30-day Trial Period Ends | 7/24/2017 |
| Defendant’s Pretrial Disclosures Due | 8/8/2017 |
| Defendant’s 30-day Trial Period Ends | 9/22/2017 |
| Plaintiff’s Rebuttal Disclosures Due | 10/7/2017 |
| Plaintiff’s 15-day Rebuttal Period Ends | 11/6/2017 |

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.

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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.
