

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Lykos

Mailed: March 24, 2003

Cancellation No. 92040746

Georgia Graham Jones

v.

Holtzschue, Alison

Angela Lykos, Interlocutory Attorney

On October 28, 2002, the Board issued a notice of default judgment to respondent for failure to file an answer, and on March 17, 2003, entered default judgment against respondent.

It has now come to the Board's attention that on November 27, 2002, respondent filed a motion to set aside the notice of default judgment. In view thereof, the Board's March 17, 2003 order entering default judgment against respondent is hereby vacated.

Turning now to respondent's motion to set aside and notice of default, respondent contends she did not receive the petition for cancellation.

Whether default judgment should be entered against a party is determined in accordance with Fed. R. Civ. P.

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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 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).

The record shows that respondent's failure to timely file an answer was neither willful nor unduly prejudicial but due to an inadvertent error in receiving the mail in a timely manner. Respondent has also argued that it has a meritorious defense to petitioner's claims.

The Board is persuaded that the foregoing reason constitutes good cause to set aside respondent's notice of default judgment. In view thereof, respondent's motion to set aside the notice of default is granted.

It has now come to the attention of the Board that the petition to cancel filed was unsigned. Petitioner is advised that Trademark Rule 2.119(a) provides that every paper filed in an *inter partes* case must be signed by the party filing it, or by the party's attorney or other

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authorized representative, but an unsigned paper will not be refused consideration if the signed copy is submitted to the Patent and Trademark Office within the time limits set in the notification of this defect by the Office.

Furthermore, as respondent notes, the averments contained in the petition to cancel are not in numbered paragraphs as required by Fed. R. Civ. P. 10(b).

Accordingly, petitioner is allowed until thirty (30) days from the mailing date of this order in which to submit a signed petition to cancel with all averments made in numbered paragraphs, the contents of each which shall be limited as far as practicable to a statement of a single set of circumstances, failing which the petition will be dismissed without prejudice as a nullity.

Proceedings are otherwise suspended.