

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: February 12, 2007

Cancellation No. 92042991

Hachette Filipacchi Presse

v.

Elle Belle, LLC

Ann Linnehan, Interlocutory Attorney

On February 15, 2006, the Board issued an order wherein it granted petitioner's motion to amend its petition to cancel and allowed respondent thirty days, or until March 17, 2006, to file an answer to the amended notice to cancel. On May 4, 2005, respondent filed its answer along with a motion to accept its late-filed filed answer. Petitioner filed a response thereto.

In support of its motion to accept its late-filed answer, respondent asserts that it never received the Board's February 15, 2006 order and was "unaware of the Board's finding in regards to the Petitioner's Motion to Amend [the] Petition to Cancel and Suspend Proceedings and the deadline set by the Board upon the Respondent."

In response, petitioner argues that respondent has failed to show good cause for its failure to file a timely answer. Specifically, petitioner contends that the Board

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has the correct address for respondent's counsel; that respondent has "never had a problem with receipt of prior TTAB orders;" that respondent was aware that petitioner had filed a motion to amend its petition to cancel, but failed to "timely monitor the progress of the proceeding."

In considering whether to accept respondent's late-filed answer or to enter default judgment against respondent, the standard is the Fed. R. Civ. P. 55(c) standard, i.e., whether the defendant has shown good cause why default judgment should not be entered against it. As a general rule, good cause 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). The determination of whether default judgment should be entered against a party lies within the Board's sound discretion. In exercising that discretion, the Board is mindful of its policy to decide cases on their merits where possible and therefore only reluctantly enters judgment by default for failure to timely answer. See TBMP Section 312.02 (2d ed. rev. 2004).

Petitioner's contention that because respondent knew that petitioner had filed a motion to amend its petition to cancel respondent should have filed a timely answer to the

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amended petition is unpersuasive. Respondent's awareness of petitioner's filing of a motion to amend its petition to cancel is irrelevant because respondent's time to file an answer to the amended petition ran from the date that the Board issued the February 15, 2006 order.

Inasmuch as the Board presumes that respondent's counsel did not receive the Board's February 15, 2006 order, the Board finds that respondent has shown the requisite good cause. In particular, respondent's failure to answer in a timely manner was neither willful, nor in bad faith, but rather was caused by respondent's counsel's non-receipt of the February 15, 2006 order. Further, there is no evidence of any prejudice to petitioner, such as lost evidence and/or unavailable witnesses, and respondent has set forth a meritorious defense by way of the denials set forth in its answer. In view thereof, respondent's motion to accept its late-filed answer is granted.

Proceedings herein remain suspended pending the disposition of the petitioner's pending motion (filed April 29, 2006) for summary judgment, which the Board will decide shortly.

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