

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

Mailed: January 26, 2006

Cancellation No. 92045147

Metro Q

v.

Gay & Lesbian Yellow Pages,
Inc.

George C. Pologeorgis, Interlocutory Attorney:

Answer was due in this case on December 22, 2005. Respondent did not file an answer by such date nor did it file a timely motion to further extend its time to answer. In view thereof, petitioner filed a motion for default judgment on December 28, 2005 requesting the Board to enter a show cause order as to why default judgment should not be entered against respondent for failing to file a timely answer. On December 30, 2005, respondent filed its answer. On December 31, 2005, respondent filed a response to petitioner's motion for default judgment arguing that respondent's failure to file a timely answer was the result of inadvertence and miscalculation on the part of

respondent's counsel and the fact that respondent's counsel was on a family vacation during the Christmas holidays.¹

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 Hyman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556 (TTAB 1991).

In this case, the Board finds that petitioner is not prejudiced by respondent's eight day late filing and, by filing an answer which denies the fundamental allegations in the petition to cancel, respondent has asserted a meritorious defense to this action. Furthermore, the Board finds that respondent's delay in filing a timely answer was not willful or in bad faith. In view of the foregoing,

¹ Respondent's response to petitioner's motion for default judgment filed on December 31, 2005 fails to indicate proof of service on petitioner, as required by Trademark Rule 2.119.

The Board notes, however, that petitioner's reply to respondent's response to the motion for default judgment (the reply of which the Board, in its discretion under Trademark Rule 2.127(a), has taken under consideration in issuing this order), indicates that petitioner's counsel became privy to respondent's response through the Board's ESTTA system. Notwithstanding, strict compliance with Trademark Rule 2.119 is required by respondent in all future papers filed with the Board.

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petitioner's motion for default judgment is denied, the default is set aside, and respondent's answer is accepted.

Discovery and trial dates remain as set in the Board's November 12, 2005 institution order.