

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

Mailed: April 12, 2006

Cancellation No. 92045152

James A. Frost, dba Frost  
Cutlery

v.

Ginkgo International, Ltd.

George C. Pologeorgis, Interlocutory Attorney:

Respondent's answer was due in this case on December 24, 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, the Board issued a notice of default on February 28, 2006 requiring respondent to show cause why judgment should not be entered against respondent. On March 27, 2006 (via certificate of mailing), respondent filed its answer and provided a response to the Board's February 28, 2006 show cause order.

In its response, respondent claims that it never received a copy of petitioner's petition to cancel and therefore was unaware of the instant proceeding. It was only until respondent received the Board's February 28, 2006 show cause order that respondent became aware of this case. In view thereof, respondent asserts that under the

aforementioned circumstances respondent was unable to provide a timely answer.

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 late filing and, by filing an answer which denies the fundamental allegations in the petition to cancel, respondent has asserted a meritorious defense to the petition. Moreover, the Board finds that the reasons for respondent's delay were not willful or in bad faith, but unintentional and excusable. In view of the foregoing, the notice of default is hereby set aside and respondent's answer is noted and accepted.

The parties are allowed **THIRTY DAYS** from the mailing date of this order to serve responses to any outstanding discovery requests. Trial dates, including the close of discovery, are reset as follows:

Opposition No. 92045152

DISCOVERY TO CLOSE:	<b>August 12, 2006</b>
Thirty-day testimony period for party in position of plaintiff to close:	<b>November 10, 2006</b>
Thirty-day testimony period for party in position of defendant to close:	<b>January 9, 2007</b>
Fifteen-day rebuttal testimony period to close	<b>February 23, 2007</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 Trademark Rules 2.128(a) and (b).

An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.