

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

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Mailed: June 1, 2006

Cancellation No. 92045312

THE BLACK & DECKER
CORPORATION

v.

WATER TECH LLC

Elizabeth A. Dunn, Attorney:

On April 11, 2006, respondent was ordered to show cause why judgment should not be entered against it in accordance with Fed. R. Civ. P. 55(b) for respondent's failure to timely answer the petition to cancel.

Respondent filed a motion to set aside the notice of default on May 15, 2006. Respondent states that its failure to file an answer to the petition to cancel was inadvertent, was due to the parties being actively involved in settlement negotiations, and that the terms of the settlement agreement have been generally agreed upon. Respondent also states that its failure to respond was not willful, due to gross neglect, or prejudicial to petitioner.

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 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 Board is persuaded that the foregoing reasons constitute good cause to set aside the Board's notice of default. First, there is no evidence that respondent's failure to timely answer the petition to cancel was either willful or the result of gross neglect. Second, the Board can see no prejudice to opposer, other than delay -- which the Board would not characterize as significant -- that would result from accepting respondent's late-filed answer. Furthermore, discovery remains open, and by this order will be extended, giving the parties sufficient time to conduct any necessary fact-finding.

In view thereof, the order to show cause why default should not be entered is hereby discharged and the notice of default is set aside.

Additionally, because the parties are negotiating for possible settlement of this case, proceedings herein are suspended until six months from the mailing date of this order, subject to the right of either party to request resumption at any time. See Trademark Rule 2.117(c).

If, during the suspension period, either of the parties or their attorneys should have a change of address, the Board should be so informed.

Unless this matter is otherwise resolved, at the conclusion of the current suspension period, proceedings shall resume with out further order or notice of the Board upon the following schedule:

Proceedings Resume:	December 1, 2006
Answer Due:	December 31, 2006
Discovery Period to Close:	June 1, 2006
Plaintiff's 30-day testimony period to close:	August 29, 2006
Defendant's 30-day testimony period to close:	October 29, 2006
15-day rebuttal testimony period to close:	December 13, 2006

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 Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.
