

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

MBA

Mailed: March 12, 2008

Cancellation No. 92045951

Digress Ventures, LLC

v.

Christian Belce-Kennedy

**Before Hairston, Grendel and Cataldo, Administrative
Trademark Judges.**

By the Board:

Respondent's Registration No. 2569622 (the "Registration") was cancelled pursuant to a Commissioner's order issued January 30, 2007, following the Board's December 20, 2006 decision entering default judgment against respondent. The Board entered default judgment because respondent neither responded to the notice of default issued August 23, 2006, nor took any other action in this proceeding. The Board's notice of default, order entering default judgment and order canceling the registration were all transmitted to respondent's address of record, as was the Board's June 21, 2006 order instituting this proceeding.

On May 30, 2007, an attorney -- who assisted respondent in prosecuting the application which eventually matured into the Registration, but who apparently was not previously authorized to represent respondent in this proceeding -- filed a letter with the Board claiming that "the [Registration] should be restored and proceedings, if any, should commence herewith." While the basis for these claims is not entirely clear, and there is no evidentiary or other support for them, the attorney's letter alleges that the Board's institution order correctly set forth respondent's street address, but omitted respondent's country of residence (Switzerland). While there is no suggestion that the envelope in which the order was sent also omitted the country of residence, much less that respondent did not receive the order, the attorney's letter states "[i]t is counsel's opinion that the Petition should have been directed to the undersigned," and that "counsel was not served, as required" There is no allegation or suggestion of any kind that respondent did not receive the Board's orders of August 23, 2006, December 20, 2006 or January 30, 2007. In any event, in its order of June 20, 2007, the Board construed the attorney's letter as a motion for relief from judgment under Fed. R. Civ. P. 60(b), and allowed petitioner 30 days in which to file a response.

In its response, petitioner argues that the motion for relief from judgment should be denied because: (1) after respondent failed to respond to the notice of default, petitioner invested a significant amount of money in, and opened, a restaurant for which it has pending published and unopposed applications; (2) the motion is unauthorized and non-justiciable because the only arguable authority for its filing on respondent's behalf is the old power of attorney in the original application, and there is no evidence that respondent authorized the attorney to file the motion for relief from judgment or that the attorney even communicated with respondent about this proceeding; (3) respondent does not claim that it failed to receive any of the Board's notices or orders issued in this case, much less support any such claims with evidence; and (4) the attorney who filed the motion failed to properly update his address in the Office's records for the Registration.¹

While a notice of default may be set aside for good cause, "once default judgment has actually been entered against a defendant pursuant to Fed. R. Civ. P. 55(b), the judgment may be set aside only in accordance with Fed. R. Civ. P. 60(b) ... the stricter standard [of Rule 60(b)]

¹ The Board's December 20, 2006 order entering default judgment was sent to the attorney at his address of record, but returned as undeliverable. A party's or attorney's failure to notify the Board of a change of address may result in entry of default judgment. TBMP § 117.07 (2d ed. rev. 2004).

reflects public policy favoring finality of judgments and termination of litigation." TBMP § 312.03. Indeed, "[r]elief from a final judgment is an extraordinary remedy to be granted only in exceptional circumstances." TBMP § 544; see also, Jack Lenor Larsen Inc. v. Chas. O. Larson Co., 44 USPQ2d 1950, 1952 (TTAB 1997) (motions for relief from judgment are considered "with a scrupulous regard for the aims of finality.").

In order to establish that relief from the default judgment is appropriate, respondent "must persuasively show (preferably by affidavits, declarations, documentary evidence, etc., as may be appropriate) that the relief requested is warranted for one or more of the reasons specified in Fed. R. Civ. P. 60(b)." While respondent's motion for relief from judgment does not cite or attempt to meet the requirements of Fed. R. Civ. P. 60(b), the only reasons which could conceivably apply are "mistake, inadvertence, surprise, or excusable neglect" under Fed. R. Civ. P. 60(b)(1), or "any other reason that justifies relief," under Fed. R. Civ. P. 60(b)(6).

Assuming, without deciding, that the attorney who filed the motion for relief from judgment is authorized to act on respondent's behalf in this proceeding, we find no basis upon which to grant the relief requested. As a preliminary matter, the attorney's "opinion" that he should have been

served with the petition for cancellation and/or other papers is simply incorrect. Trademark Rule 2.113(c); see also, TBMP § 310.01.

Perhaps more importantly, the motion for relief from judgment does not "persuasively show," and in fact does not even specifically allege, mistake, inadvertence, surprise, excusable neglect or any other reason that justifies relief. There is a presumption that the Board's orders reached respondent. Jack Lenor Larsen, 44 USPQ2d at 1953. The motion for relief from judgment does not overcome this presumption, as it does not even suggest, much less persuasively show, that the orders and notices of August 23, 2006, December 20, 2006 or January 30, 2007 did not reach respondent. While there is a vague suggestion that the June 21, 2006 institution order may have contained an incomplete address for respondent, there is also no allegation, much less persuasive showing or supporting evidence, that the June 21, 2006 order did not reach respondent.²

Because the motion for relief from judgment does not establish, persuasively or otherwise, any grounds for relief from judgment under Fed. R. Civ. P. 60(b), and because

² It is worth noting in this regard that in Jack Lenor Larsen, the respondent introduced a declaration of its president claiming that it did not receive any of the several orders mailed in that case, and the Board found the declaration insufficient to overcome the presumption of delivery. Here, of course, there is no declaration or other evidence of any kind.

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petitioner would be prejudiced by our granting relief from judgment, the motion is **DENIED**.