

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

Baxley

Mailed: February 16, 2007

Opposition No. 91167886
Opposition No. 91170726
Cancellation No. 92046567

Computer Geeks, Inc.

v.

Compgeeks.Com

(as consolidated)

Andrew P. Baxley, Interlocutory Attorney:

This case now comes up for consideration of the following motions: 1) defendant's motion (filed January 3, 2007) to accept its late-filed answer in Cancellation No. 92046567; 2) defendant's motion (filed February 6, 2007) to consolidate the above-captioned proceedings; and 3) defendant's motion (filed February 15, 2007) to suspend Opposition Nos. 91167886 and 91170826 pending disposition of the motion to consolidate. Defendant's motion to accept its late-filed answer has been fully briefed.

The Board turns first to applicant's motion to accept its late-filed answer in the above-captioned cancellation proceeding. However the issue of a defendant's failure to timely answer is raised, the standard for determining whether default judgment should be entered against a

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defendant for its failure to timely file an answer to a complaint 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 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 *Paolo's Associates Limited Partnership v. Paolo Bodo*, 21 USPQ2d 1899 (Comm'r 1990); *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 sound discretion of the Board. In exercising that discretion, the Board is mindful of the fact that Board policy is to decide cases on their merits. Accordingly, the Board only reluctantly enters default judgments for failure to timely answer, and tends to resolve any doubt on the matter in favor of defendants. See TBMP Section 312.02 (2d ed. rev. 2004).

Keeping in mind the foregoing, the Board, on the present record, finds that defendant's failure to file its answer in Cancellation No. 92046567 in a timely manner was inadvertent. More specifically, such failure was caused by the misdirection within the offices of defendant of copies of the notice instituting this proceeding and petition to

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cancel that the Board sent to defendant. Further, there is no evidence of prejudice to plaintiff, and defendant has set forth a meritorious defense by way of the denials in its answer. Based on the foregoing, the Board finds that defendant has shown good cause why judgment should not be entered against it in Cancellation No. 92046567.

In view thereof, defendant's motion to accept its late-filed answer in Cancellation No. 92046567 is granted. Defendant's answer in that proceeding is accepted and made of record.

The Board turns next to defendant's motion to consolidate the above-captioned proceedings.¹ Inasmuch as the above-captioned proceedings involve common issues of law and fact, defendant's motion to consolidate is hereby granted.² See Fed. R. Civ. P. 42(a); *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991); *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382 (TTAB 1991); TBMP Section 511 (2d ed. rev. 2004). Opposition Nos. 91167886 and 91170726 and Cancellation No. 92046567 are hereby consolidated.

The consolidated cases may be presented on the same record and briefs. See *Helene Curtis Industries Inc. v.*

¹ The above-captioned opposition proceedings were consolidated in an August 3, 2006 order.

² Accordingly, defendant's motion to suspend pending the Board's decision on defendant's motion to consolidate is moot.

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Suave Shoe Corp., 13 USPQ2d 1618 (TTAB 1989) and *Hilson Research Inc. v. Society for Human Resource Management*, 26 USPQ2d 1423 (TTAB 1993).

The Board file will be maintained in Opposition No. 91167886 as the "parent" case. As a general rule, from this point onward, the parties should file only single copies of any submissions herein; but those single copies should include all three proceeding numbers in their captions.

Despite being consolidated, each proceeding retains its separate character. The decision on the consolidated cases shall take into account any differences in the issues raised by the respective pleading; a copy of the decision shall be placed in each proceeding file.

Pursuant to the Board's January 19, 2007 order in Opposition Nos. 91167886 and 91170726, the discovery period in those opposition proceedings closed on **February 15, 2007**. Pursuant to the notice instituting Cancellation No. 92046567, the discovery period in the cancellation proceeding will close on **May 22, 2007**. Testimony periods in these consolidated proceedings are reset as follows.

Plaintiff's 30-day testimony period to close: **8/20/07**

Defendant's 30-day testimony period to close: **10/19/07**

Plaintiff's 15-day rebuttal testimony period to close: **12/3/07**

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