

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

coggins

Mailed: March 2, 2007

Cancellation No. 92046595

H. J. Rashti & Company, Inc.

v.

Children's Wear Digest, Inc.

Thomas W. Wellington
Interlocutory Attorney,
Trademark Trial and Appeal Board:

No answer having been timely received, the Board issued notice of default to respondent, on January 5, 2007, allowing it thirty days in which to show cause why judgment should not be entered against it. Now before the Board is respondent's January 12, 2007 response to the notice of default.¹ The purpose of respondent's filing is unclear.

To the extent the January 12, 2007 filing intends to show good cause why default judgment should not be entered against respondent, it fails provide sufficient detail as to respondent's conduct, delay, and possible defenses to the

¹ Respondent's communication does not indicate proof of service of a copy of same on counsel for opposer as required by Trademark Rule 2.119 (which is more fully explained later in this order). In order to expedite this matter, a copy of said communication is forwarded herewith to counsel for opposer, but strict compliance with Trademark Rule 2.119 is required in all further papers filed with the Board.

petition. Good cause why default judgment should not be entered against a defendant, for failure to file a timely answer to the complaint, is usually found when the defendant shows that (1) the delay in filing an answer was not the result of willful conduct or gross neglect on the part of the defendant, (2) the plaintiff will not be substantially prejudiced by the delay, and (3) the defendant has a meritorious defense to the action. See *Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556 (TTAB 1991); and *DeLorme Publishing Co v. Eartha's Inc.*, 60 USPQ2d 1222, 1224 (TTAB 2000).

To the extent the January 12, 2007 filing is an answer to the petition to cancel, if fails to provide admissions and/or denials of the allegations in the petition to cancel as required by Fed. R. Civ. P. 8(b).² Federal R. Civ. P. 8(b) provides, in part:

A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder.

² Fed. R. Civ. P. 8(b) is made applicable to this proceeding by Trademark Rule 2.116(a).

The petition to cancel filed by petitioner H. J. Rashti & Company, Inc. herein consists of six numbered paragraphs setting forth the basis of petitioner's claim of damage. In accordance with Fed. R. Civ. P. 8(b) it is incumbent on respondent to answer the petition to cancel by admitting or denying the allegations contained in each paragraph. If respondent is without sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, it should so state and this will have the effect of a denial.

As noted earlier in this order, Trademark Rules 2.119(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney, and proof of such service must be made before the paper will be considered by the Board. Consequently, copies of all papers which respondent may subsequently file in this proceeding, including its answer to the petition for cancellation, must be accompanied by a signed statement indicating the date and manner in which such service was made. The statement, whether attached to or appearing on the paper when filed, will be accepted as prima facie proof of service. See TBMP Sections 113 *et seq.* (2d ed. rev. 2004).

Respondent will be expected to comply with all applicable rules and Board practices during the remainder of this case. It should be noted that while Patent and Trademark Rule 10.14 permits authorized officers to represent a corporation, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in an opposition proceeding to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney.

If respondent does not retain counsel, then respondent will have to familiarize itself with the rules governing this proceeding. The Trademark Rules are codified in part two of Title 37 of the Code of Federal Regulations (also referred to as the CFR). The CFR and the Federal Rules of Civil Procedure are likely to be found at most law libraries and may be available at some public libraries. The Board's manual of procedure will also be helpful.

On the World Wide Web, respondent may access most of these materials by logging onto <http://www.uspto.gov> and making the connection to trademark materials.

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel.

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Notice of default under Fed. R. Civ. P. 55(a) is maintained. Respondent is allowed until THIRTY DAYS from the mailing date of this order to file (1) a response showing good cause why default judgment should not be entered against it, and (2) an answer that complies with Rule 8(b) of the Federal Rules of Civil Procedure.

Discovery and trial dates remain as set in the Board's November 8, 2006 institution order.
