

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

Brown

Mailed: January 16, 2008

Cancellation No. 92048260

Family Clubhouse,
Incorporated d/b/a i play

v.

International Playthings,
Inc., substituted as party
defendant for IPI
Acquisition Corporation¹

Angela Lykos, Interlocutory Attorney

This case comes before the Board for consideration of petitioner's motion (filed December 13, 2007) for default judgment due to respondent's failure to timely answer the petition to cancel.² On December 21, 2007, respondent filed a responsive brief in opposition thereto as well as a cross-motion to accept its late-filed answer submitted previously on December 7, 2007.

After careful consideration of the arguments of both parties and a review of the prosecution history, petitioner's motion for default judgment is denied, and respondent's cross-motion to accept its late-filed answer is granted.

¹ Evidence thereof recorded with the Assignment Branch of the USPTO on November 5, 2007, at Reel 3654, Frame 0377.

In order to accept respondent's late-filed answer and to avoid default judgment, a sufficient showing of good cause is required. See Fed. R. Civ. P. 55 (c) and *Trademark Trial and Appeal Board Manual of Procedure* ("TBMP") § 312.02 (2d ed. rev. 2004).

In general, good cause will be found where the delay has not been the result of willful conduct or gross neglect, when prejudice is lacking and where the defendant has offered a meritorious defense to the cause of action. See *Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556, 1557 (TTAB 1991). The Board remains reluctant to grant judgments by default for failure to file a timely answer and tends to resolve any doubt in favor of a defendant. See *Delorme Publishing Co v. Eartha's Inc.*, 60 USPQ2d 1222 (TTAB 2000). For the reasons discussed below, the Boards find that respondent has shown the requisite good cause to avoid default judgment and for the Board to accept its late-filed answer.

There is no evidence that respondent's failure to timely answer or request an extension was either willful or the result of gross neglect. As indicated in the supporting declaration of Mr. Paul H. Kochanski, counsel for respondent, Mr. Kochanski received a copy of the petition for cancellation on October 23, 2007, and assumed that it

² Proceedings were instituted on October 17, 2007, and by Board order,

had been docketed by his law firm's docket clerk. The firm's policy with respect to Board proceedings was to docket the petition once both the petition and the Board's scheduling order were received. However, only the previous owner of the registration at issue in this case received the Board's scheduling order. At the time of institution of this proceeding, the assignment records of the USPTO showed IPI Acquisition Corporation listed as the owner of Registration No. 2923675. On November 5, 2007, approximately three weeks after the Board's scheduling order was mailed, the assignment records of the USPTO were updated to reflect the current owner, International Playthings. Under these circumstances, respondent's failure to timely answer was inadvertent.

Once Mr. Kochanski discovered that the deadline had been missed on December 7, 2007, he took immediate action by filing an answer on the same day, thereby minimizing the length of the delay and prejudice to the respondent. In fact, given that the answer was submitted only nine days after the answer deadline, the Board sees little, if any, prejudice to respondent. In addition, discovery remains open, and by this order will be extended, giving the parties sufficient time to conduct any necessary fact-finding.

respondent's answer was due November 26, 2007.

With submission of its answer, respondent appears to possess a plausible response to the allegations listed in the petition to cancel, and it is clear that the merits of the response do not require the Board's evaluation at this stage of the proceeding. *See Delorme Publishing Co* at 1224. Resolving any doubt in respondent's favor, the Board finds that the respondent has indeed shown sufficient cause to accept its late-filed answer and to avoid default judgment.

Accordingly, petitioner's motion is hereby denied. The Board now accepts respondent's answer as the operative pleading in this case, and trial dates, including the closing date of discovery, are reset as follows:

DISCOVERY PERIOD TO CLOSE:	June 9, 2008
30-day testimony period for party in position of plaintiff to close:	September 7, 2008
30-day testimony period for party in position of defendant to close:	November 6, 2008
15-day rebuttal testimony period for plaintiff to close:	December 21, 2008

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. *See Trademark Rule 2.125.*

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b).

Cancellation No. 92048260

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

NEWS FROM THE TTAB:

The USPTO also recently published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:

<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>