

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

Baxley

Mailed: February 2, 2010

Cancellation No. 92051787

The Liberace Foundation

v.

Bill Collins dba Will Collins
Entertainment

Andrew P. Baxley, Interlocutory Attorney:

On January 21, 2010, the Board sent a notice of default to applicant because no answer was of record.

In response, respondent stated that he failed to file his answer because his computer, on which he had stored his trademark history and documentation, crashed in December 2009 and was not functioning and operative until January 15, 2010. Respondent contends in addition that he had "holiday and work obligations and engagements." Accordingly, respondent asks that the Board set aside the notice of default.

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 an entry of default." As a general rule, good cause to set aside a defendant's default will be

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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 *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 Board's sound discretion. In exercising that discretion, the Board is mindful of its policy to decide cases on their merits where possible and therefore only reluctantly enters judgment by default for failure to timely answer. See TBMP Section 312.02 (2d ed. rev. 2004).

The Board finds that respondent's failure to timely answer was inadvertent in that such failure was caused by his recent computer crash. Further there is no indication of any prejudice to petitioner, and respondent intends to defend the petition to cancel on the merits.¹ Accordingly, the Board find that respondent has shown good cause why default judgment should not be entered against him.

Petitioner's consented motion (Filed January 29, 2010) to suspend this proceeding for settlement negotiations is

¹ Respondent asserts in his response to the notice of default that he has "an ongoing situation with [his] postal delivery whereby hard copy material and/or registered mail is misplaced or lost in cluster mail boxes." The Board notes, however, that respondent can receive courtesy copies of Board orders by e-mail if he provides a current e-mail address. Respondent's current e-mail address of record appears to be that of his predecessor-in-interest.

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granted.² Proceedings herein are suspended until April 2, 2010, subject to either party's right to request resumption at any time. See Trademark Rule 2.117(c).

If there is no word from either party concerning the progress of their negotiations by April 2, 2010, proceedings herein will resume automatically without further action by the Board on April 3, 2010. Respondent will be allowed until **May 3, 2010** to file an answer. Remaining dates will go forward as follows.

Deadline for Discovery Conference	6/2/10
Discovery Opens	6/2/10
Initial Disclosures Due	7/2/10
Expert Disclosures Due	10/30/10
Discovery Closes	11/29/10
Plaintiff's Pretrial Disclosures	1/13/11
Plaintiff's 30-day Trial Period Ends	2/27/11
Defendant's Pretrial Disclosures	3/14/11
Defendant's 30-day Trial Period Ends	4/28/11
Plaintiff's Rebuttal Disclosures	5/13/11
Plaintiff's 15-day Rebuttal Period Ends	6/12/11

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.

² Petitioner's motion refers to respondent's counsel, Ira David of the Morishita Law Firm, LLC. However, no attorney has entered an appearance herein on respondent's behalf herein. See TBMP Section 117.01 (2d ed. rev. 2004).

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