

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

RK/kk

Mailed: May 19, 2010

Cancellation No. 92052049

Silk Water Solutions Inc.

v.

Dassa Holdings Ltd.

Yong Oh (Richard) Kim, Interlocutory Attorney:

On April 6, 2010, the Board issued a notice of default for failure of respondent to file an answer. The Board allowed respondent time to show cause why default judgment should not be entered against it.

On April 26, 2010, counsel for respondent filed an appearance and on May 6, 2010, filed a response to the show cause order essentially asserting that respondent failed to file an answer to the petition because it did not timely receive it.¹

¹ It is noted that a certificate of service was not attached to the originally filed petition. On March 22, 2010, petitioner filed a "Declaration of Service" attesting to the service of the petition for cancellation. However, the address for respondent reflected in the Declaration is inconsistent with the address on record and is most likely the reason why the service copy was returned to petitioner as undeliverable.

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: "The court may set aside an entry of default for good cause". 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 the defendant has a meritorious defense. See *Fred Hyman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556 (TTAB 1991). Moreover, the Board is reluctant to grant judgments by default, since the law favors deciding cases on their merits. See *Paolo's Associates Limited Partnership v. Paolo Bodo*, 21 USPQ2d 1899 (Comm'r 1990).

Insofar as there is no indication that respondent's failure to timely answer the petition for cancellation was willful or in bad faith, and petitioner will not suffer prejudice given that the proceeding is in its early stages,² it appears that setting aside default may be appropriate. However, respondent has not yet filed a proposed answer to the petition for cancellation, and it is therefore impossible to determine whether respondent has a meritorious defense. Accordingly, consideration of default is hereby **DEFERRED**, until respondent files its proposed answer.

² Moreover, any possible prejudice to petitioner may be obviated by extending the disclosure and discovery dates.

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Respondent is allowed until **June 20, 2010** in which to file an answer to the petition for cancellation.

Dates in this proceeding are reset as follows:

Time to Answer	6/20/10
Deadline for Discovery Conference	7/20/10
Discovery Opens	7/20/10
Initial Disclosures Due	8/19/10
Expert Disclosures Due	12/17/10
Discovery Closes	1/16/11
Plaintiff's Pretrial Disclosures	3/2/11
Plaintiff's 30-day Trial Period Ends	4/16/11
Defendant's Pretrial Disclosures	5/1/11
Defendant's 30-day Trial Period Ends	6/15/11
Plaintiff's Rebuttal Disclosures	6/30/11
Plaintiff's 15-day Rebuttal Period Ends	7/30/11

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.

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