

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

WINTER

Mailed: March 31, 2011

Cancellation No. 92052927

Mr. Joseph E. Newgarden III

v.

Kent G. Anderson

BY THE TRADEMARK TRIAL AND APPEAL BOARD:

This case now comes up for consideration of petitioner's motion (filed October 11, 2010) for default judgment. The motion is fully briefed.

In accordance with the Board's institution order for this proceeding mailed on August 24, 2010, answer was due on October 3, 2010. In its motion, petitioner argues that respondent has not filed an answer; that respondent did not file a request for an extension of time; and that when an answer is not timely filed, the petition may be decided as in case of default.

On October 18, 2010, in response thereto, respondent separately submitted a motion to accept a late-filed answer and an answer. In said responsive brief, respondent explains that its delay in submitting an answer was due to a docketing error in his counsel's office; that respondent's

Cancellation No. 92052927

brief, fourteen day delay in filing the answer will not prejudice petitioner by way of loss of evidence or witnesses; and that respondent (that is, respondent's counsel) did not act in bad faith in filing a late answer to the petition for cancellation.

If a defendant fails to file an answer to a complaint during the time allowed therefor, the Board may issue a notice of default. Alternatively, the plaintiff in a proceeding may file a motion requesting that default judgment should be entered against the defendant for its failure to file a timely answer to the complaint. See Trademark Rules 2.106(a) and 2.114(a), 37 C.F.R. §§ 2.106(a) and 2.114(a). See also TBMP § 312.01 (2d ed. rev. 2004). If the defendant who has failed to file a timely answer to the complaint responds to such a motion by filing a response comprising a satisfactory showing of good cause why default judgment should not be entered against it, the Board will not enter a default judgment against the defendant. See Fed. R. Civ. P. 55(c); and *Paolo's Associates Limited Partnership v. Paolo Bodo*, 21 USPQ2d 1899 (Comm'r 1990); and *Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556 (TTAB 1991). See also TBMP § 312.02 (2d ed. rev. 2004).

Additionally, good cause why default judgment should not be entered against a defendant for failure to file a

Cancellation No. 92052927

timely answer to the complaint is usually found when the defendant shows that the delay in filing an answer was not the result of willful conduct or gross neglect on the part of the defendant; the plaintiff will not be substantially prejudiced by the delay; and the defendant has a meritorious defense to the action. *See DeLorme Publishing Co. v. Eartha's Inc.*, 60 USPQ2d 1222, 1224 (TTAB 2000).

In this case, the Board finds that respondent's failure to timely file its answer to the petition for cancellation was not the result of willful intention or bad faith; rather, the delay was due to an inadvertent docketing error. Further, there is no evidence of record that petitioner is prejudiced by respondent's brief delay in filing its answer; that is, petitioner has not alleged that witnesses or evidence have become unavailable due to the passage of time, or that it has suffered any other substantial prejudice. *See DeLorme Publishing*, 60 USPQ2d at 1224. Additionally, respondent has set forth a meritorious defense in its answer filed on October 18, 2010. "All that is required is a plausible response to the allegations in the complaint." *See Id.* Additionally, it is the policy of the law to decide cases on their merits. TBMP § 312.02 (2d ed. rev. 2004).

Accordingly, in view of the foregoing, petitioner's motion for default judgment is denied; respondent's motion to accept its late-filed answer is granted; and respondent's

Cancellation No. 92052927

answer to the petition for cancellation is accepted as its responsive pleading herein.

In view of the foregoing, trial dates, including conferencing, disclosure due dates, and the discovery period, are reset as indicated in the following schedule:

Deadline for Discovery Conference	4/30/2011
Discovery Opens	4/30/2011
Initial Disclosures Due	5/30/2011
Expert Disclosures Due	9/27/2011
Discovery Closes	10/27/2011
Plaintiff's Pretrial Disclosures	12/11/2011
Plaintiff's 30-day Trial Period Ends	1/25/2012
Defendant's Pretrial Disclosures	2/9/2012
Defendant's 30-day Trial Period Ends	3/25/2012
Plaintiff's Rebuttal Disclosures	4/9/2012
Plaintiff's 15-day Rebuttal Period Ends	5/9/2012

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, 37 C.F.R. § 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b), 37 C.F.R. §§ 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129, 37 C.F.R. § 2.129.

☼☼☼