

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

gcp

Mailed: January 5, 2012

Cancellation No. 92054629

Sheltered Wings, Inc.

v.

Wohali Outdoors, LLC

By the Trademark Trial and Appeal Board:

This case now comes before the Board for consideration of respondent's motion (filed December 13, 2011) to set aside its default and to accept its late-filed answer. The motion is fully briefed.

Answer in this case was due on November 21, 2011. Respondent did not file an answer by such date nor did it file a motion for an extension of time to file an answer. In view thereof, on December 5, 2011, the Board issued an order requiring respondent to show cause why judgment should not be entered against respondent for failing to file a timely answer or to request an extension of time to answer.

In its December 13, 2011 combined response to the Board's default notice and motion to accept a late-filed answer,

respondent contends that it never received the Board's institution order dated October 12, 2011 and only became aware of these proceedings upon receiving the Board's December 5, 2011 notice of default. Respondent filed its answer to the petition to cancel concurrently with its December 13, 2011 filing.

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 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).

In this case, the Board finds that petitioner is not prejudiced by respondent's approximate three-week late filing and, by filing an answer which denies the fundamental allegations in the petition to cancel, respondent has asserted a meritorious defense to the petition to cancel. Moreover, the Board finds that the reasons for respondent's delay were not willful or in bad faith, but rather due to the fact that

respondent never received the Board's institution order setting the deadline to file its answer.¹

In view of the foregoing, respondent's default is set aside, respondent's motion to accept its late-filed answer is granted, and respondent's answer filed concurrently with its December 13, 2011 motion is noted and accepted.

Proceedings remain ongoing. Trial dates, beginning with the deadline for the parties' required discovery conference, are reset as follows:

Deadline for Discovery Conference	2/4/2012
Discovery Opens	2/4/2012
Initial Disclosures Due	3/5/2012
Expert Disclosures Due	7/3/2012
Discovery Closes	8/2/2012
Plaintiff's Pretrial Disclosures	9/16/2012
Plaintiff's 30-day Trial Period Ends	10/31/2012
Defendant's Pretrial Disclosures	11/15/2012
Defendant's 30-day Trial Period Ends	12/30/2012
Plaintiff's Rebuttal Disclosures	1/14/2013
Plaintiff's 15-day Rebuttal Period Ends	2/13/2013

¹ A defendant is under no obligation to file an answer to a complaint in an opposition or cancellation proceeding until it receives the Board's notification setting the time for filing an answer. See TBMP 310.03(a) (3d ed. 2011). Although respondent's copy of the Board's institution order was not returned as undeliverable by the U.S. Postal Service, there is nothing in the record which would contradict respondent's contention that it never received the Board's institution order.

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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 Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.