

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

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Mailed: June 27, 2013

Cancellation No. **92054923**

Valgeir Tomas Sigurdsson

v.

Consolidated European Brands
Ltd.

Yong Oh (Richard) Kim, Interlocutory Attorney:

This matter comes up on respondent's motion (filed March 21, 2012) to set aside the notice of default issued on February 7, 2012. The motion has been fully briefed by the parties but consideration thereof has been deferred pending settlement discussions between the parties. On April 10, 2013, petitioner filed a motion to resume proceedings herein and seeking disposition of the pending motion.

By the Board's institution order of December 13, 2011, respondent's answer to the petition for cancellation was due by January 22, 2012. A notice of default issued on February 7, 2012. Respondent did not file its answer until March 16, 2012.

The standard for determining whether default judgment should be entered against the defendant for its failure to file a timely answer to the complaint is found in Fed. R.

Civ. P. 55(c) which states that "[t]he court may set aside an entry of default for good cause." Good cause is generally found where "(1) the delay in filing is not the result of willful conduct or gross neglect, (2) the delay will not result in substantial prejudice to the opposing party, and (3) the defendant has a meritorious defense." *DeLorme Publishing Co. v. Eartha's Inc.*, 60 USPQ2d 1222, 1223 (TTAB 2000).

Taking each of these points in reverse order, the showing of a meritorious defense does not require an evaluation of the merits of the case. All that is required is a plausible response to the allegations in the complaint. See TBMP § 312.02 (3d ed. rev. 2012). Here, by filing an answer denying the salient allegations of the petition for cancellation, respondent has shown its intent to defend itself in this cancellation and that it has a meritorious defense to petitioner's claims. See *DeLorme Publishing Co. v. Eartha's Inc.*, 60 USPQ2d at 1224.

As to the question of prejudice, an answer was due on January 22, 2012, a notice of default issued on February 7, 2012, and an answer was filed on March 16, 2012. Respondent's delay in filing its answer is less than two months and there is nothing in the record to suggest, and petitioner has not otherwise demonstrated, that petitioner has been prejudiced by the resultant delay. Rather, petitioner's opposition to respondent's motion to set aside the notice of default lies in whether respondent's delay in

filing its answer was the result of willful conduct or gross neglect.

Here, petitioner essentially argues that the petition for cancellation was publically available when it was filed on December 13, 2011, and that neither respondent nor its counsel has "unequivocally" stated that they did not receive the petition or were not aware of the petition in December 2011. In reply, respondent submitted additional declarations from its Chief Executive Officer and its counsel wherein they state that the petition was never received.

In reviewing the circumstances surrounding respondent's late-filed answer, it appears that neither respondent nor its counsel was aware of the petition or the institution of this proceeding and there is nothing in the record to suggest the kind of gross or willful conduct that would justify entering default judgment in petitioner's favor. Indeed, upon learning of the petition, respondent's counsel contacted petitioner's counsel that same day to secure petitioner's consent to set aside the notice of default and filed its answer a week later and a motion to set aside the default shortly thereafter.

The Board further notes that because the law favors deciding cases on their merits, the Board is reluctant to grant judgments of default and tends to resolve all doubts by setting aside default, particularly when a proceeding is at such an early stage as is the case here. See *Paolo's*

Associates Limited Partnership v. Paolo Boda, 21 USPQ2d 1899
(Comm'r 1990).

In view thereof, respondent's motion is **GRANTED** and the notice of default is hereby **SET ASIDE**. Respondent's proposed answer is **ACCEPTED** and is now respondent's operative pleading herein. Proceedings herein are **RESUMED** and dates are **RESET** as follows:

Deadline for Discovery Conference	7/31/2013
Discovery Opens	7/31/2013
Initial Disclosures Due	8/30/2013
Expert Disclosures Due	12/28/2013
Discovery Closes	1/27/2014
Plaintiff's Pretrial Disclosures Due	3/13/2014
Plaintiff's 30-day Trial Period Ends	4/27/2014
Defendant's Pretrial Disclosures Due	5/12/2014
Defendant's 30-day Trial Period Ends	6/26/2014
Plaintiff's Rebuttal Disclosures Due	7/11/2014
Plaintiff's 15-day Rebuttal Period Ends	8/10/2014

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 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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