

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

Mailed: July 23, 2012

Cancellation No. 92055598

Dylan Kwasniewski IP Holding  
Co., LLC

v.

Emanuel J. Severe

Cheryl S. Goodman, Interlocutory Attorney:

On July 12, 2012, the Board issued notice of default for failure of respondent to file its answer. The Board allowed respondent time to show cause why default judgment should not be entered against it.

On July 20, 2012, respondent filed its response to the Board's order.<sup>1</sup>

Good cause for discharging a default is generally found if (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

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<sup>1</sup> Respondent's filing failed to include a certificate of service. To expedite the matter, a link to respondent's filing is provided for petitioner herein.  
<http://ttabvueint.uspto.gov/ttabvue/v?pno=92055598&pty=CAN&eno=1>  
Respondent is advised that all papers filed in this proceeding must be served on opposing counsel. See Trademark Rule 2.119(a). More information is provided below regarding Trademark Rule 2.119. See also TBMP Section 113 (3d ed. rev. 2012) regarding certificate of service and its form.

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defendant has a meritorious defense. *Fred Hayman Beverly Hills Inc. v. Jacques Bernier Inc.*, 21 USPQ2d 1556 (TTAB 1991). In analyzing the above factors, the Board has kept in mind that the law strongly favors determination of cases on their merits. *Paolo's Associates Ltd. Partnership v. Bodo*, 21 USPQ2d 1899, 1902 (Comm'r Pats. 1990).

With respect to whether default was willful, respondent advises that it attempted to contact opposing counsel regarding the petition to cancel to discuss the matter, but his calls went unanswered. Respondent further advises that he was searching for legal representation, and that during this period he also had prescheduled travel which did not provide for access to the computer.

The Board finds that respondent's failure to file an answer was not willful.

With respect to the question of prejudice, the Board finds none inasmuch as mere delay alone does not constitute prejudice. Moreover, there is no indication of loss of evidence or witnesses in this case.

With respect to the question of whether there is a meritorious defense, respondent has stated that he has continued to use the mark and has sold goods that display the mark.

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The Board finds that these statements set forth a meritorious defense to the abandonment and lack of bona fide use claims.

Inasmuch as the Board finds good cause for setting aside default, default is set aside.

Respondent is allowed until August 22, 2012 to file his answer to the petition to cancel.

Dates are reset as follows:

|   |            |
|---|------------|
| Time to Answer                          | 8/22/2012  |
| Deadline for Discovery Conference       | 9/21/2012  |
| Discovery Opens                         | 9/21/2012  |
| Initial Disclosures Due                 | 10/21/2012 |
| Expert Disclosures Due                  | 2/18/2013  |
| Discovery Closes                        | 3/20/2013  |
| Plaintiff's Pretrial Disclosures        | 5/4/2013   |
| Plaintiff's 30-day Trial Period Ends    | 6/18/2013  |
| Defendant's Pretrial Disclosures        | 7/3/2013   |
| Defendant's 30-day Trial Period Ends    | 8/17/2013  |
| Plaintiff's Rebuttal Disclosures        | 9/1/2013   |
| Plaintiff's 15-day Rebuttal Period Ends | 10/1/2013  |

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.

Pro Se Information

*Filing an Answer:*

Fed. R. Civ. P. 8(b) provides, in part:

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A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder.

The petition to cancel filed by petitioner herein consists of 8 paragraphs setting forth the basis of petitioner's claim of damage. In accordance with Fed. R. Civ. P. 8(b) it is incumbent on respondent to answer the petition to cancel by admitting or denying the allegations contained in each paragraph. If respondent is without sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, it should so state and this will have the effect of a denial. See TBMP Section 311 (3d ed. rev. 2012) for more information on the form and content of the answer.

*Service of Papers*

As noted earlier in this order, Trademark Rules 2.119(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board

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must be served upon the attorney for the other party, or on the party if there is no attorney, and proof of such service must be made before the paper will be considered by the Board. Consequently, copies of all papers which respondent may subsequently file in this proceeding, including its answer to the petition to cancel, must be accompanied by a signed statement indicating the date and manner in which such service was made. The statement, whether attached to or appearing on the paper when filed, will be accepted as prima facie proof of service. See TBMP Section 113 (3d ed. rev. 2012) for more information regarding service of papers.

*Representation in a Board Proceeding*

It should also be noted that while Patent and Trademark Rule 11.14 permits any person to represent himself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in a cancellation proceeding to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney.

*Resources*

It is recommended that respondent obtain a copy of the latest edition of Title 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice. These rules may be viewed at the USPTO's trademarks page:

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<http://www.uspto.gov/main/trademarks.htm>. The Board's main webpage (<http://www.uspto.gov/web/offices/dcom/ttab/>) includes information on amendments to the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a web link to the Board's manual of procedure (the TBMP).

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel.