

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

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Mailed: February 26, 2014

Cancellation No. **92058054**

Morris Visitor Publications, LLC

v.

GMA Accessories, Inc.

Yong Oh (Richard) Kim, Interlocutory Attorney:

This matter comes up on respondent's motion (filed December 19, 2013) to set aside the Board's notice of default. The motion is contested.

By the Board's institution order of October 22, 2013, respondent's answer to the petition for cancellation was due by December 1, 2013. As neither an answer nor a motion to extend time to answer was filed by respondent, a notice of default issued on December 17, 2013. Two days later, respondent moved to set aside the default attaching its answer to the petition for cancellation.

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 (2013). 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 by December 1, 2013, a notice of default issued on December 17, 2013, and an answer was filed on December 19, 2013. Respondent's delay in filing its answer is less than three weeks and only two days after being notified of the default. There is nothing in the record to suggest, and petitioner has not demonstrated otherwise, that petitioner has been prejudiced by the resultant delay. Rather, the majority of petitioner's opposition to respondent's motion to set aside the notice of default is dedicated to pointing out the alleged falsity of respondent's assertion that the parties

were engaged in settlement discussions in September and October of 2013. However, the verity of the statement, or lack thereof, in and of itself, fails to demonstrate that respondent's delay in filing its answer was the result of willful conduct or gross neglect. Indeed, the promptness of respondent's response to the notice of default, along with its answer to the petition for cancellation, would suggest that there was no willful delay on the part of respondent and there is nothing in the record to suggest that respondent was grossly negligent in failing to file its answer.

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	3/31/2014
Discovery Opens	3/31/2014
Initial Disclosures Due	4/30/2014
Expert Disclosures Due	8/28/2014
Discovery Closes	9/27/2014
Plaintiff's Pretrial Disclosures Due	11/11/2014
Plaintiff's 30-day Trial Period Ends	12/26/2014

Defendant's Pretrial Disclosures Due	1/10/2015
Defendant's 30-day Trial Period Ends	2/24/2015
Plaintiff's Rebuttal Disclosures Due	3/11/2015
Plaintiff's 15-day Rebuttal Period Ends	4/10/2015

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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