

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

wbc

Mailed: June 18, 2014

Cancellation No. 92048700

Van de Wall B.V.

v.

D-Minor, Inc.

Wendy Boldt Cohen, Interlocutory Attorney:

On March 13, 2014, petitioner filed a motion for default judgment for respondent's failure to file an answer to petitioner's amended petition to cancel. On April 1, 2014, respondent filed its response. The Board has considered the parties' submissions and presumes the parties' familiarity with the factual bases for the order and does not recount them here.

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, that "the court may set aside an entry of default for good cause." *See* TBMP §§ 312 and 508 (3d ed. rev.2 2013). As a general rule, good cause to set aside a respondent's default will be found where the respondent's delay has not been willful or in bad faith, when prejudice to the petitioner is lacking, and where the respondent has a meritorious defense. *See Fred Hayman Beverly Hills, Inc. v. Jacques Bernier Inc.*, 21 USPQ2d 1556 (TTAB 1991). The determination of whether default judgment should be entered against a party lies within the

Board's sound discretion. TBMP § 312.02. In exercising that discretion, the Board is mindful of its policy to decide cases on their merits where possible and therefore only reluctantly enters judgment by default for failure to timely answer. *See Paolo's Associates Limited Partnership v. Paolo Bodo*, 21 USPQ2d 1899 (Comm'r 1990); *Id.*

In considering whether default judgment should be entered for failure to timely file an answer, the Board considers whether respondent has shown good cause in its failure to file a timely answer, not the merits of the case. *See Fed. R. Civ. P. 55(c); DeLorme Publishing, Co. v. Eartha's Inc.*, 60 USPQ2d 1222, 1224 (TTAB 2000)(consideration of the "meritorious defense" prong of the good cause test does not require the Board to evaluate the merits of the opposition); *Fred Hayman Beverly Hills, Inc. v. Jacques Bernier Inc.*, 21 USPQ2d 1556 (TTAB 1991).

Respondent's alleges that its delay was due to press of other litigation, "establishing a second office in Atlanta, Georgia," and its new docketing system. Bearing in mind the Board's policy of deciding cases on the merits where possible, the Board finds that such reason constitutes a sufficient showing of good cause, although just barely, why default judgment should not be entered against respondent. First, there is no evidence that respondent's failure to timely answer the amended petition to cancel was either willful or the result of gross neglect. Second, the Board can see no prejudice to petitioner, other than delay, which would result from accepting what would be respondent's late-filed

answer. Finally, the Board finds that respondent has attempted to set forth a meritorious defense, by way of its answer.¹ Whether respondent will prevail in this proceeding is, of course, a matter for trial.

In view thereof, petitioner's motion for default judgment is denied and any resultant default is discharged.²

Proceedings are resumed and dates are reset as follows:

Deadline for Discovery Conference	7/6/2014
Discovery Opens	7/6/2014
Initial Disclosures Due	8/5/2014
Expert Disclosures Due	12/3/2014
Discovery Closes	1/2/2015
Plaintiff's Pretrial Disclosures	2/16/2015
Plaintiff's 30-day Trial Period Ends	4/2/2015
Defendant's Pretrial Disclosures	4/17/2015
Defendant's 30-day Trial Period Ends	6/1/2015
Plaintiff's Rebuttal Disclosures	6/16/2015
Plaintiff's 15-day Rebuttal Period Ends	7/16/2015

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 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.

¹ Respondent's answer included with its response to the motion for default judgment is noted and is treated as respondent's operative pleading.

² Respondent is advised, however, that the Board will look with disfavor upon any further failure to comply with deadlines set by the Board or the Trademark Rules of Practice.