

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

GCP

Mailed: September 19, 2014

Cancellation No. 92058412

Spartan Brands, Inc.

v.

Randy Appell

By the Trademark Trial and Appeal Board:

This proceeding now comes before the Board for consideration of (1) Petitioner's motion (filed April 11, 2014) for default judgment, and (2) Respondent's cross-motion (filed April 30, 2014) to extend his time to answer the petition to cancel, as well as to extend his time to respond to Petitioner's motion for default judgment.

As background, answer was originally due in this matter on January 29, 2014. On January 27, 2014, Respondent filed a motion to extend his time to answer. In support of his motion, Respondent contended that he required additional in order to retain counsel to assist him in this proceeding. By order dated March 11, 2014, the Board granted Respondent's motion to extend and allowed Respondent until March 28, 2014 in which to answer or otherwise respond to the petition to cancel. Respondent did not file his answer or

otherwise respond to the petition to cancel by the March 28, 2014, reset deadline.

On April 11, 2014, Petitioner filed a motion for default judgment inasmuch as Respondent failed to file his answer by the reset March 28, 2014 deadline. In support of its motion, Petitioner argues that, *inter alia*, that over the course of the past three months, the parties engaged in settlement discussions but have been unable to reach settlement. Petitioner further contends that its counsel left a voicemail for Respondent on at least two occasions regarding settlement, with no response from Respondent.

On April 30, 2014, Respondent filed an unconsented motion to further extend his time to answer the petition to cancel, as well as to respond to Petitioner's motion for default judgment.¹ In support thereof, Respondent maintains that he has attempted to contact Petitioner's counsel regarding his request for a further extension of time and to discuss settlement of this matter but has been unable to reach Petitioner's counsel and has not received a return phone call, contrary to the statements made in Petitioner's motion for default judgment. Respondent further contends that he has still been unable to secure counsel up to the present, despite diligent efforts to do so, but continues his efforts to obtain legal representation. Respondent also maintains that if he is unable to retain counsel

¹ The Board notes that Respondent's April 30, 2014, motion fails to demonstrate proof of service of the same upon Petitioner's counsel, as required by Trademark Rule 2.119. The Board forwarded Respondent's April 30, 2014, motion to Petitioner's counsel on May 13, 2014 and allowed Petitioner the appropriate time in which to file its response thereto. **Respondent is advised that any future filings which do not comply with the proof of service requirements under Trademark Rule 2.119 will be given no consideration by the Board.**

he will represent himself *pro se* in this matter. Finally, Respondent contends that he has a meritorious defense and requests that the Board permit this case to be adjudicated on the merits.

In response, Petitioner essentially argues that the Board has already afforded Respondent more than sufficient time to retain counsel and to file his answer to the petition to cancel.

Following a careful review of the parties' arguments, the Board finds that Respondent has satisfactorily explained, albeit minimally, his need for additional time and, therefore, has shown good cause² sufficient to justify a further extension of time to answer, particularly since there seems to be a discrepancy between the parties' respective versions regarding their attempts to contact each other regarding settlement. The Board also does not find that Respondent has been negligent or has acted in bad faith. Further, even though this is Respondent's second request for an extension of time to answer, the Board does not find that Respondent has abused the privilege of extensions. Finally, the Board prefers to decide cases on the merits. Accordingly, Respondent's motion to extend is **GRANTED** to the extent set forth below.³

Respondent's answer is now due by **October 8, 2014**.

² While the Board notes that Respondent filed his unconsented motion to further extend further his time to respond to the petition to cancel subsequent to the reset deadline for filing his answer and is therefore technically in default, the showing required to set aside Applicant's technical default is good cause, and not excusable neglect. *See* TBMP §§ 312 and § 508.

³ In light of this order, Petitioner's motion for default judgment is deemed moot and will be given no further consideration.

Remaining trial dates are reset as follows:

Deadline for Discovery Conference	11/7/2014
Discovery Opens	11/7/2014
Initial Disclosures Due	12/7/2014
Expert Disclosures Due	4/6/2015
Discovery Closes	5/6/2015
Plaintiff's Pretrial Disclosures Due	6/20/2015
Plaintiff's 30-day Trial Period Ends	8/4/2015
Defendant's Pretrial Disclosures Due	8/19/2015
Defendant's 30-day Trial Period Ends	10/3/2015
Plaintiff's Rebuttal Disclosures Due	10/18/2015
Plaintiff's 15-day Rebuttal Period Ends	11/17/2015

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

As a final matter, the Board **will not entertain any further requests by Respondent to extend his time to answer or otherwise respond to the petition to cancel, unless consented to by Petitioner.** If Respondent fails to file and serve his answer or otherwise respond to the petition to cancel by the reset deadline set forth above, and Petitioner thereafter files a renewed motion for default judgment, the Board will, in all likelihood, grant Petitioner's renewed motion for default judgment.