

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: July 1, 2015

Cancellation No. 92061164

Cleansmart Cleaners, LLC

v.

Kleansmart Corporation

By the Trademark Trial and Appeal Board:

Respondent's answer to the petition to cancel was due on May 6, 2015. Respondent did not file an answer to the petition by such date nor did it file a timely motion to further extend its time to answer. In view thereof, the Board issued a notice of default on May 18, 2015 requiring Respondent to show cause why judgment should not be entered against it. On June 17, 2015, Respondent filed its answer contemporaneously with its response to the Board's May 18, 2015, default notice, as well as motion to accept its late-filed answer.

In support of its motion to accept its late-filed answer, Respondent contends that, upon receiving the petition to cancel, Respondent duly attempted to obtain trademark counsel to advise it on its rights and obligations. Respondent further maintains, however, that it was unable to procure counsel with the deadline set by the Board to file its answer. Respondent also contends that it always intended to

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defend against the cancellation action, and the delay to do so was not the result of willful conduct or gross neglect.

Decision

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: “for good cause shown the court may set aside an entry of default.” As a general rule, good cause to set aside a defendant’s default will be found where the defendant’s delay has not been willful or in bad faith, when prejudice to the plaintiff is lacking, and where defendant has a meritorious defense. *See Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556 (TTAB 1991).

First, the Board finds that Petitioner is not prejudiced by Respondent’s approximate five week late filing and, by filing an answer which denies the fundamental allegations in the petition to cancel, Respondent has asserted a meritorious defense to the petition. Moreover, based upon the record, the Board finds that the reasons for Respondent’s delay were not willful or in bad faith, but rather due to Respondent’s inability to retain counsel within the time set to file its answer to the petition to cancel. Further, the Board is very reluctant to enter default judgment for failure to file a timely answer, and tends to resolve any doubt on the matter in favor the defendant. TBMP § 312.02 (2015).

In view of the foregoing, Respondent’s motion to set aside its default and accept its late-filed answer is **GRANTED**, the Board’s May 18, 2015, default notice is

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hereby set aside, and Respondent's answer filed on June 17, 2015 is noted and accepted.

As a final matter, Petitioner's change of correspondence address filed on June 11, 2015 is noted. Board records have been updated accordingly to reflect this address change.

Trial Schedule

Trial dates, beginning with the deadline for the parties' required discovery conference, are reset as follows:

Deadline for Discovery Conference	7/31/2015
Discovery Opens	7/31/2015
Initial Disclosures Due	8/30/2015
Expert Disclosures Due	12/28/2015
Discovery Closes	1/27/2016
Plaintiff's Pretrial Disclosures Due	3/12/2016
Plaintiff's 30-day Trial Period Ends	4/26/2016
Defendant's Pretrial Disclosures Due	5/11/2016
Defendant's 30-day Trial Period Ends	6/25/2016
Plaintiff's Rebuttal Disclosures Due	7/10/2016
Plaintiff's 15-day Rebuttal Period Ends	8/9/2016

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.