UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: May 18, 2004

Opposition No. **91157811**

China Healthways Institute, Inc.

v.

"Miles" Chong Chen, Ph.D.

Frances S. Wolfson, Interlocutory Attorney:

On April 8, 2004 (via certificate of mailing), opposer filed a motion for default judgment based on applicant's failure to answer the notice of opposition. Applicant filed a response to opposer's motion for default judgment that included its proposed answer to the notice of opposition.

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 Hyman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556 (TTAB 1991).

In this case, the Board finds that opposer is not prejudiced by the late filing and, by filing an answer which denies the fundamental allegations in the notice of opposition, applicant has asserted a meritorious defense to this action. Moreover, while applicant's lack of familiarity with the Trademark Rules of Practice and other applicable law governing trademark matters resulted in applicant's failure to properly answer the notice of opposition, applicant's delay in filing a proper answer has not been willful or in bad faith.

Accordingly, opposer's motion for default judgment is hereby denied. Applicant's answer to the notice of opposition is entered.[1] Trial dates, including the close of discovery, are reset as indicated below.

DISCOVERY PERIOD TO CLOSE:	**November 20, 2004**
30-day testimony period for party in the position of plaintiff to close:	**February 18, 2005**
30-day testimony period for party in the position of the defendant to close:	**April 19, 2005**
15-day rebuttal period for party in the position of the plaintiff to close:	**June 3, 2005**

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.

New Developments at the Trademark Trial and Appeal Board

- Files of TTAB proceedings can now be examined using TTAB Vue, accessible at http://ttabvue.uspto.gov. After entering the 8-digit proceeding number, click on any entry in the prosecution history to view that paper in PDF format. Papers filed prior to January 2003 may not have been scanned. Unscanned papers are available for public access at the TTAB. For further information on file access, call the TTAB at (703) 308-9330.

- Parties should also be aware of recent changes in the rules affecting trademark matters, including the rules of practice before the TTAB. *See* Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003) (www.uspto.gov/web/offices/com/sol/notices/68fr55748.pdf); Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003) (www.uspto.gov/web/offices/com/sol/notices/68fr48286.pdf).

- The second edition (June 2003) of the Trademark Trial and Appeal Board Manual of Procedure (TBMP) has been posted on the USPTO web site at www.uspto.gov/web/offices/dcom/ttab/tbmp/.

[1] In view thereof, applicant's motion to extend its time to answer is moot.