

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mail date: May 5, 2004

Opposition No. 91/158265

Nash-Finch Company

v.

**Castle Wine and Brandy Company
Limited**

Cheryl Butler, Attorney, Trademark Trial and Appeal Board:

The Board sent notice of default to applicant in an order dated March 1, 2004. Applicant filed a response thereto on March 30, 2004.

In its response, applicant indicates that the parties have been engaged in settlement discussions and twice stipulated to extensions of time for applicant to answer, with the most recent agreement setting applicant's answer due by February 21, 2004. Applicant indicates further that, due to clerical errors, said stipulations were not filed with the Board and applicant's answer was not filed as agreed. Accompanying applicant's response are copies of the stipulated motions to extend time and applicant's answer to the notice of opposition.

Where an applicant who has failed to file a timely answer to the complaint responds to the notice of default judgment by

Opposition No. 91158265

filing a satisfactory showing of good cause why default judgment should not be entered, the Board will set aside the notice of default. See Fed. R. Civ. P. 55(c). Good cause is usually found when the applicant shows that (1) the delay in filing an answer was not the result of willful conduct or gross negligence on the part of the applicant, (2) the opposer will not be substantially prejudiced by the delay, and (3) the applicant has a meritorious defense to the actions. See TBMP Section 312 (2nd ed. June 2003).

In this case, applicant has shown good cause sufficient to set aside the notice of default.¹ Accordingly, the notice of default is discharged, and applicant's answer is noted and entered.

Discovery and trial dates are reset as indicated below:

THE PERIOD FOR DISCOVERY TO CLOSE:	September 15, 2004
30-day testimony period for party in position of plaintiff to close:	December 14, 2004
30-day testimony period for party in position of defendant to close:	February 12, 2005
15-day rebuttal testimony period to close:	March 29, 2005

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on

¹ Additionally, the law favors deciding cases on their merits. Accordingly, the Board is reluctant to grant judgments of default for failure to file a timely answer and tends to resolve any doubts by setting aside default. See, for example, *Paolo's Associates Ltd. Partnership v. Boda*, 21 USPQ2d 1899 (Comm'r. Pats. 1990).

Opposition No. 91158265

the adverse party within thirty days after completion of the taking of testimony. Rule 2.125.

Briefs shall be filed in accordance with Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Rule 2.129.

☼☼☼