

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

Baxley

Mailed: April 12, 2006

Opposition No. 91167471

Choi Heung Yeun - Macau
Limited

v.

Zhongshan Juxiangyuan Food Co.
Ltd.

Andrew P. Baxley, Interlocutory Attorney:

On February 2, 2006, the Board sent a notice of default to applicant because no answer was of record

In response thereto, applicant contends that it believes that it filed an answer in a timely manner, but that such answer was not received by the Board.¹ Applicant therefore asks that the Board accept as its responsive

¹ On March 1, 2006, in response to the notice of default, applicant filed both a motion to reopen time to answer and a motion to accept a late-filed answer. The filing of a motion is an *inter partes* matter that contemplates the filing of a brief in response thereto. See Trademark Rule 2.127(a); TBMP Section 502.02(b) (2d ed. rev. 2004). On the other hand, a notice of default is essentially an *ex parte* matter between the Board and the party required by such notice to show cause why judgment should not be entered against it; the issuance of a notice of default does not contemplate the filing of a brief in response by that party's adversary. See TBMP Section 312.01 (2d ed. rev. 2004). Because responding to a notice of default with a motion may lead to the filing of an unnecessary brief in response thereto, the better practice is to simply respond to the notice of default.

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pleading the answer that was filed as an exhibit to its response.

The Board finds that applicant has shown good cause to set aside the notice of default. See Fed. R. Civ. P. 55(c); TBMP Section 312.02 (2d ed. rev. 2004). Applicant's answer is accepted and entered into the record.

In view of the delay in receiving applicant's answer, the Board deems it appropriate to extend the close of the discovery period. Accordingly, the discovery and testimony periods are reset as follows.

DISCOVERY PERIOD TO CLOSE:	7/14/06
Plaintiff's 30-day testimony period to close:	10/12/06
Defendant's 30-day testimony period to close:	12/11/06
Plaintiff's 15-day rebuttal testimony period to close:	1/25/07

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.