

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

Baez

Mailed: January 12, 2007

Opposition No. 91172578

Editorial Planeta S.A.

v.

Hispanic News Press, LLC

**Angela Lykos, Interlocutory Attorney**

On November 13, 2006, the Board issued a notice of default in this proceeding which allowed applicant time to show cause why default judgment should not be entered against applicant for failure to file an answer.

On December 11, 2006, applicant filed a motion to set aside default and accept its late filed answer, stating that its failure to time answer the notice of opposition was due to the fact that it never received the Board's institution order or opposer's pleading.

The standard for determining default judgment is found in 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 the defendant has a meritorious defense. See *Fred Hyman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556 (TTAB 1991).

Moreover, the Board is reluctant to grant judgments by default, since the law favors deciding cases on their merits. See *Paolo's Associates Limited Partnership v. Paolo Bodo*, 21 USPQ2d 1899 (Comm'r 1990).

In this instance, we find that applicant has shown cause sufficient to avoid a default judgment. First, there is no evidence that applicant's failure to timely answer the notice of opposition was either willful or the result of gross neglect. Second, the Board can see no prejudice to opposer, other than delay -- which the Board would not characterize as significant -- that would result from accepting applicant's late-filed answer. Finally, the Board finds that applicant has attempted to set forth a meritorious defense, by way of its answer. Whether applicant will prevail in this proceeding is, of course, a matter for trial.

Accordingly, applicant's motion is granted and the notice of default mailed on November 13, 2006, is hereby **set aside**. Fed. R. Civ. P. 55. Applicant's answer is accepted and entered.

Trial dates remain as previously set.

\*\*\*\*\*