

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

Wellington/Ricks

Mailed: April 9, 2007

Opposition No. 91174787

New Line Productions, Inc.

v.

B.J. Alan Company

**Thomas W. Wellington,  
Interlocutory Attorney:**

Answer was due on January 31, 2007.

Applicant did not file an answer 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 to applicant on February 20, 2007 requiring applicant to show cause why judgment should not be entered against it. On March 12, 2007, applicant filed its answer (with counterclaim) and a response to the Board's notice of default order.

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 applicant's failure to timely file its answer was not the result of willful inattention or bad faith; that opposer is not prejudiced by applicant's late filing.

In view thereof, the Board's notice of default dated February 20, 2007 is hereby set aside, and applicant's answer (with counterclaim) is accepted as its responsive pleading herein. Fed R. Civ. P. 55(c).

Opposer and counterclaim defendant, New Line Productions, Inc., is allowed until **THIRTY DAYS** from the mailing date of this order to file an answer to the counterclaim. See Trademark Rules 2.106(b)(2)(iii) and 2.121(b)(2).

In accordance with the Trademark Rules of Practice, discovery is open, and the close of discovery and testimony dates are set as indicated below. 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.

THE PERIOD FOR DISCOVERY TO CLOSE: **July 10, 2007**

30-day testimony period for party  
in position of plaintiff in the  
opposition to close:

**October 8, 2007**

30-day testimony period for party  
in position of defendant in  
the opposition and plaintiff in  
the counterclaim to close:

**December 7, 2007**

30-day rebuttal testimony period  
for plaintiff in the opposition and  
defendant in the counterclaim  
to close:

**February 5, 2008**

15-day rebuttal testimony period for  
plaintiff in the counterclaim to  
close:

**March 21, 2008**

**Briefs shall be due as follows:  
[See Trademark Rule 2.128(a)(2)].**

Brief for plaintiff in the  
opposition shall be due:

**May 20, 2008**

Brief for defendant in the  
opposition and plaintiff in  
the counterclaim shall be due:

**June 19, 2008**

Brief for defendant in the  
counterclaim and reply brief,  
if any, for plaintiff in the  
opposition shall be due:

**July 19, 2008**

Reply brief, if any, for  
plaintiff in the counterclaim  
shall be due:

**August 3, 2008**

If the parties stipulate to any extension of these dates,  
the filing should set forth the dates in the format shown in  
this order. See Trademark Rule 2.121(d).

An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.