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

Lykos

Mailed: June 13, 2007

Opposition No. 91175940

Maryellen Kane

v.

Olive Oil World Trade, S.L.

Angela Lykos, Interlocutory Attorney

On April 27, 2007, applicant was ordered to show cause why judgment by default should not be entered against applicant in accordance with Fed. R. Civ. P. 55(b) for failure to timely answer the notice of opposition or file a motion to extend its time to answer.

On May 24, 2007, applicant filed a response thereto which the Board construes as a combined motion to set aside the notice of default and to accept its late-filed answer. Applicant contends that its failure to timely answer the pleading was unintentional and due to apparent miscommunications between U.S. counsel for applicant and applicant, a foreign corporation in a non-English speaking country.

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. Indeed, as applicant's U.S. counsel explains, the delay was due to challenges involved in working with a foreign client. Thus, applicant's failure to timely answer the notice of opposition was inadvertent. 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. Applicant's answer is less than two months late. Furthermore, discovery remains open, and by this order will be extended, giving the parties sufficient

time to conduct any necessary fact-finding. 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.

In view thereof, applicant's combined motion to set aside the notice of default and to accept applicant's late-filed answer is granted. Trial dates, including the closing date of discovery, and testimony periods, are reset as follows:

THE PERIOD FOR DISCOVERY TO CLOSE:	11/16/07
30-day testimony period for party in position of plaintiff to close:	2/14/08
30-day testimony period for party in position of defendant to close:	4/14/08
15-day rebuttal testimony period for plaintiff to close:	5/29/08

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.l25.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b).

An oral hearing will be set only upon request filed as provided by Trademark Rule 2.l29.