

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

Baxley

Mailed: August 3, 2007

Opposition No. 91177403

Digipress, Inc.

v.

Bella Media, LLC

**Andrew P. Baxley, Interlocutory Attorney:**

On July 17, 2007, the Board sent a notice of default to applicant because no answer was of record.

In response, applicant contends that it failed to file an answer because it mistakenly believed that proceedings in this case would be suspended for settlement negotiations once this case was instituted. Accordingly, applicant asks that the Board set aside the notice of default and accept its concurrently filed answer.

The standard for determining whether default judgment should be entered against a defendant for its failure to file a timely answer to the complaint is the Fed. R. Civ. P. 55(c) standard, i.e., whether the defendant has shown good cause why default judgment should not be entered against it. 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 Hayman Beverly Hills, Inc. v. Jacques Bernier Inc.*, 21 USPQ2d 1556 (TTAB 1991). The determination of whether default judgment should be entered against a party lies within the Board's sound discretion. In exercising that discretion, the Board is mindful of its policy to decide cases on their merits where possible and therefore only reluctantly enters judgment by default for failure to timely answer. See TBMP Section 312.02 (2d ed. rev. 2004).

Notwithstanding that this proceeding has not been suspended for settlement negotiations and that dates have run since the issuance of the Board notice instituting this proceeding, the Board finds that applicant's failure was inadvertent and that there is no evidence that applicant's delay was willful or in bad faith. Further, there is no indication that opposer was prejudiced by applicant's failure to timely answer, and applicant has set forth a meritorious defense by way of the denials set forth in its answer. Accordingly, the notice of default is hereby set aside. Applicant's concurrently filed answer is accepted and made of record.<sup>1</sup>

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<sup>1</sup> Notwithstanding the foregoing, applicant is advised that the Board will look with disfavor upon any further failure by applicant to comply with deadlines set by the Board or the applicable rules.

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Discovery and testimony periods remain as set in the Board notice instituting this proceeding.