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

Mailed: September 8, 2008

Opposition No. 91183364

Aaron T. Tabor

v.

Unicity Properties, Inc.

Robert H. Coggins,
Interlocutory Attorney:

No answer having been timely received, the Board issued notice of default to applicant, on June 19, 2008, allowing it thirty days in which to show cause why judgment should not be entered against it. Now before the Board is applicant's motion (filed July 21, 2008) to set aside the notice of default and to accept applicant's concurrently filed late answer.[1]

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[1] Applicant's communications do not indicate proof of service of a copy of same on counsel for opposer as required by Trademark Rule 2.119 (which is more fully explained later in this order). In order to expedite this matter, opposer is directed to the following URLs where it may view a copy of applicant's responses:
http://ttabvueint.uspto.gov/ttabvue/v?pno=91183364&pty=OPP&eno=6
http://ttabvueint.uspto.gov/ttabvue/v?pno=91183364&pty=OPP&eno=7

Strict compliance with Trademark Rule 2.119 is required by applicant in all further papers filed with the Board. Moreover, in derogation of TBMP Section 106.02 (2d ed. rev. 2004), counsel for applicant failed to provide his business address and telephone number on the correspondence. Notwithstanding this failure, the Board has researched and updated applicant's new correspondence address.

Notice Discharged

By way of the motion, applicant states that it recently changed its trademark manager, and that the marks are different; and by way of the answer applicant states that the parties' goods and channels of trade are different. Although applicant's answer at first appears to be informal and more in the nature of a brief on the case than a responsive pleading to the notice of opposition, such an answer was brought on by opposer's poorly pleaded notice of opposition.

Applicant's failure to file a timely answer does not appear to be willful, in bad faith, or unduly prejudicial, but due to personnel issues which (the Board presumes) have been resolved. Without evaluating the merits of this case, the Board further finds that applicant's late answer contains a meritorious defense to the complaint inasmuch as it contains a plausible response to opposer's allegations. The Board is persuaded that the foregoing constitutes good cause to discharge the notice of default and to accept the answer. Fed. R. Civ. P. 55; *Fred Hayman Beverly Hills Inc. v. Jacques Bernier Inc.*, 21 USPQ2d 1556 (TTAB 1991). Accordingly, applicant's motion is granted, the notice of default is set aside, and applicant's answer is noted. However, applicant should address the following issue.

Show Cause

On August 21, 2008, the Board entered default judgment in Opposition No. 91183972 against applicant for application Serial No. 77287411 --the same application at issue herein-- pursuant to Fed. R. Civ. P. 55 and Trademark Rule 2.120(a). As a result, application Serial No. 77287411 was abandoned.

Trademark Rule 2.135 provides that if, in an inter partes proceeding, the applicant files an abandonment without the written consent of every adverse party to the proceeding, judgment shall be entered against applicant. Inasmuch as applicant failed to answer or otherwise appear in Opposition No. 91183972, judgment was entered against applicant therein, and Serial No. 77287411 was consequently abandoned, applicant is allowed until **thirty days** from the mailing date of this order in which to show cause why judgment should not be entered herein against applicant for permitting abandonment of the involved application in a different opposition proceeding without the consent of opposer herein. If applicant files no response, the Board may enter judgment against applicant based on applicant's apparent loss of interest in the case.

Proceedings herein are suspended pending a response from applicant.