

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

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Mailed: October 29, 2008

Opposition No. 91184108

J.C. Newman Cigar Company

v.

Brazil Cigars & Tobacco,
LLC

Frances S. Wolfson, Interlocutory Attorney:

On July 25, 2008, applicant was ordered to show cause why judgment should not be entered against it in accordance with Fed. R. Civ. P. 55(b) for applicant's failure to timely answer the notice of opposition.

On August 25, 2008, applicant filed a response to the notice of default together with a copy of its answer. Applicant's Managing Member, Dana Sheldon, states in her declaration that she "did not receive notice of this proceeding from Opposer, and am not aware that anyone associated with Applicant was served with such notice." Moreover, Ms. Sheldon states that she only became aware of this proceeding as a result of receiving notice of a second

opposition that has been filed against applicant's application by a third party.

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 and 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).

The Board is persuaded that good cause exists to set aside applicant's notice of default. 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. Secondly, the record does not support a finding of prejudice to opposer. The delay that would result from accepting applicant's late-filed answer is not significant. Furthermore, discovery remains open, and by

this order will be extended, giving the parties sufficient time to conduct any necessary fact-finding. Finally, applicant has shown that it has a meritorious defense by filing of its answer concurrently with its response to the notice of default.

In view thereof, the notice of default is hereby set aside. Additionally, applicant's answer dated August 25, 2008, is accepted and made of record.

Trial dates are reset as follows:

Deadline for Discovery Conference	11/10/08
Discovery Opens	11/10/08
Initial Disclosures Due	12/10/08
Expert Disclosures Due	4/9/09
Discovery Closes	5/9/09
Plaintiff's Pretrial Disclosures Due	6/23/09
Plaintiff's 30-day Trial Period Ends	8/7/09
Defendant's Pretrial Disclosures Due	8/22/09
Defendant's 30-day Trial Period Ends	10/6/09
Plaintiff's Rebuttal Disclosures Due	10/21/09
Plaintiff's 15-day Rebuttal Period Ends	11/20/09

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.

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 2.129.

NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:
<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:
<http://www.uspto.gov/we>