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

Baxley

Mailed: July 29, 2008

Opposition No. **91184181**

World Wrestling Entertainment, Inc.

v.

Stephen L. Theard

Andrew P. Baxley, Interlocutory Attorney:

On July 15, 2008, the Board sent a notice of default to applicant because no answer had been filed.

In response, applicant contends that he failed to file an answer because of unfamiliarity with Board procedure. Accordingly, applicant asks that the Board set aside the notice of default and reset his time to 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).

The Board finds that applicant's failure to file an answer in a timely manner was caused by his unfamiliarity with Board procedure and was therefore inadvertent. Further, there is no indication that opposer was prejudiced by applicant's failure to timely answer, and applicant has indicated that he intends to defend the merits of this opposition. Accordingly, the notice of default is hereby set aside. Applicant's answer is due in accordance with the schedule set forth at the conclusion of this order.

Applicant intends to represent himself in this proceeding. While Patent and Trademark Rule l0.l4 permits any person to represent himself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in inter partes proceedings before the Board to secure the services

of an attorney who is familiar with such matters. The USPTO cannot aid in the selection of an attorney.

In addition, applicant should note that Trademark Rule 2.l19(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney, and proof of such service must be made before the paper will be considered by the Board. Consequently, copies of all submissions that applicant files in this case must be accompanied by a signed statement indicating the date and manner in which such service was made, e.g., by first class mail. The statement, whether attached to or appearing on the paper when filed, will be accepted as prima facie proof of service.

In defending this opposition, applicant should review the Trademark Rules of Practice, which are available online at http://www.uspto.gov/web/offices/tac/tmlaw2.pdf, and the Trademark Board Manual of Procedure (TBMP), which is available online at http://www.uspto.gov/web/offices/dcom/ttab/tbmp/index.html.

The Board expects all parties, whether or not they are represented by counsel to comply, with the Trademark Rules of Practice and, where applicable, the Federal Rules of Civil Procedure.

Applicant's answer should comply with Federal Rule of Civil Procedure, which is made applicable this proceeding by Trademark Rule 2.116(a). Fed. R. Civ. P. 8(b) provides, in relevant part:

> A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder.

The notice of opposition filed by opposer herein consists of twenty paragraphs setting forth the basis of opposer's claim of damage. In accordance with Rule 8(b), it is incumbent on applicant to answer the notice of opposition by simply admitting or denying the allegations contained in each paragraph. If applicant is without sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, it should so state and this will have the effect of a denial.

Dates herein are reset as follows.

Answer Due	**8/29/08**
Deadline for Discovery Conference	**9/28/08**
Discovery Opens	**9/28/08**
Initial Disclosures Due	**10/28/08**
Expert Disclosures Due	**2/25/09**

Discovery Closes	**3/27/09**
Plaintiff's Pretrial Disclosures	**5/11/09**
Plaintiff's 30-day Trial Period Ends	**6/25/09**
Defendant's Pretrial Disclosures	**7/10/09**
Defendant's 30-day Trial Period Ends	**8/24/09**
Plaintiff's Rebuttal Disclosures	**9/8/09**
Plaintiff's 15-day Rebuttal Period Ends	**10/8/09**

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.l25.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.l29.