

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

Mailed: June 16, 2009

Opposition No. 91186239

Sao Paulo Alpargatas S.A.

v.

The Havana Spice Company,  
Corp.

**Ann Linnehan, Interlocutory Attorney**

On April 17, 2009, 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 May 7, 2009 applicant filed a response wherein it states the parties were actively engaged in settlement discussions and that its failure to file an answer was not the result of willful conduct or due to gross neglect. Applicant filed its answer with its response.

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 finds that applicant has shown good cause to set aside the notice of default. Applicant's failure to timely answer the notice of opposition was neither willful, nor the result of gross neglect. There is no evident prejudice to opposer other than a minor delay that would result from accepting applicant's late-filed answer. 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, the order to show cause why default should not be entered is hereby discharged and the notice of default is set aside. Applicant's answer is accepted and made of record.

Discovery and trial dates are reset as follows:

Deadline for Discovery Conference	7/16/2009
Discovery Opens	7/16/2009
Initial Disclosures Due	8/15/2009

Expert Disclosures Due	12/13/2009
Discovery Closes	1/12/2010
Plaintiff's Pretrial Disclosures	2/26/2010
Plaintiff's 30-day Trial Period Ends	4/12/2010
Defendant's Pretrial Disclosures	4/27/2010
Defendant's 30-day Trial Period Ends	6/11/2010
Plaintiff's Rebuttal Disclosures	6/26/2010
Plaintiff's 15-day Rebuttal Period Ends	7/26/2010

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 of completion of the taking of testimony. Trademark Rule 2.125.

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 2.129.