

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

kk/ah

Mailed: August 13, 2009

Opposition No. 91187553

Aldi Inc.

v.

Leehar Distributors, Inc.

Pursuant to the July 8, 2009 Board order, applicant was allowed thirty days to show good cause why the Board should not enter a default judgment for applicant's failure to file an answer.

On July 14, 2009, applicant filed a consented motion to delete Class 35 from its applications Serial Nos. 77412801 and 77412887.¹

On July 16, 2009, applicant filed a combined consented motion to set aside the notice of default and to suspend proceedings to allow the parties time to exchange executed settlement agreements and to file a motion to dismiss.

Turning first to the motion to set aside the notice of default, as a general rule, good cause to set aside a

¹ Applicant's motion to amend fails to indicate proof of service on opposer, as required by Trademark Rule 2.119 and TBMP 514.02. In order to expedite this matter, a copy of the July 14, 2009 paper is forwarded herewith to opposer's counsel. Notwithstanding, strict compliance with Trademark Rule 2.119 is required by applicant in all future papers filed with the Board.

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). 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 §312.02 (2d ed. rev. 2004).

For good cause shown, applicant's motion to set aside the notice of default is granted. See Fed. R. Civ. P. 55(c); TBMP §312.02 and Trademark Rule 2.127(a).

Regarding applicant's motion to amend its applications, in an opposition to an application having multiple classes, if the applicant files a request to amend the application to delete an opposed class, the request for amendment is, in effect, an abandonment of the application with respect to that class and is governed by Trademark Rule 2.135.

In view thereof, applicant's motion to amend its applications is granted, and applications Serial Nos. 77412801 and 77412887 stand abandoned with respect to Class 35 only.

Inasmuch as the notice of opposition only pertains to the now abandoned Class 35 services, the applications will go forward with respect to the remaining unopposed classes (Classes 36 and 44) as a matter of course. Accordingly,

applicant's motion to suspend is moot, and the notice of opposition is dismissed without prejudice.

*By the Trademark Trial
and Appeal Board*