

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

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Mailed: February 17, 2010

Opposition No. **91188645**

McKenzie River Corporation

v.

Kitchen Coffee, LLC

Yong Oh (Richard) Kim, Interlocutory Attorney:

On June 30, 2009, the Board issued a notice of default against applicant for its failure to file an answer. On July 6, 2009, applicant filed a response to the notice of default, along with an answer, indicating that the parties "have continuously been engaged in a serious settlement discussion" and that applicant's counsel's "main focus has been on achieving a settlement agreement." Subsequent to this response, the parties filed several stipulated motions¹ to suspend the proceeding for continued settlement negotiations, all of which were automatically granted by the Board's online filing system without addressing the pending notice of default.

¹ The stipulated motions to suspend were filed on August 3, 2009, September 30, 2009 and November 30, 2009.

Under Fed. R. Civ. P. 55(c), default may be set aside "for good cause shown." As a general rule, good cause to set aside an applicant's default will be found where the applicant's delay has not been willful or in bad faith, where prejudice to the opposer is lacking, and where the applicant 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).

Insofar as applicant's failure to timely answer the notice of opposition was not willful or in bad faith, and because opposer will not suffer prejudice given that this proceeding is in its early stages and the parties have apparently been discussing settlement, and given that applicant's proposed answer establishes that it has a meritorious defense, **default is hereby set aside.** Applicant's proposed answer is accepted and is now applicant's operative pleading herein.

Conferencing, discovery and disclosure and trial dates are reset as follows:

Deadline for Discovery Conference	3/14/2010
Discovery Opens	3/14/2010
Initial Disclosures Due	4/13/2010
Expert Disclosures Due	8/11/2010
Discovery Closes	9/10/2010

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Plaintiff's Pretrial Disclosures Due	10/25/2010
Plaintiff's 30-day Trial Period Ends	12/9/2010
Defendant's Pretrial Disclosures Due	12/24/2010
Defendant's 30-day Trial Period Ends	2/7/2011
Plaintiff's Rebuttal Disclosures Due	2/22/2011
Plaintiff's 15-day Rebuttal Period Ends	3/24/2011
