

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

Mailed: August 19, 2010

Opposition No. 91195361

LVD Acquisition, LLC

v.

H2Oasis, Inc.

George C. Pologeorgis, Interlocutory Attorney:

Applicant's answer to the notice of opposition was due in this case on July 31, 2010. Applicant did not file an answer to the notice of opposition by such date nor did it file a timely motion to further extend its time to answer. In view thereof, the Board issued a notice of default on August 12, 2010 requiring applicant to show cause why judgment should not be entered against it. On August 13, 2010, applicant filed its answer contemporaneously with its response to the Board's August 12, 2010 show cause order requesting that applicant's default be set aside.

In its response, applicant claims that it was unable to file a timely answer because of an inadvertent docketing error by applicant's counsel.

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 an 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 defendant has a meritorious defense. *See Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556 (TTAB 1991).

In this case, the Board finds that opposer is not prejudiced by applicant's approximate two week late filing and, by filing an answer which denies the fundamental allegations in the notice of opposition, applicant has asserted a meritorious defense to the notice of opposition. Moreover, the Board finds that the reasons for applicant's delay were not willful or in bad faith, but unintentional and excusable. In view of the foregoing, the notice of default is hereby set aside and applicant's answer is noted and accepted.

Trial dates, beginning with the deadline for the parties' required discovery conference, are reset as follows:

Deadline for Discovery Conference	9/10/2010
Discovery Opens	9/10/2010
Initial Disclosures Due	10/10/2010
Expert Disclosures Due	2/7/2011
Discovery Closes	3/9/2011
Plaintiff's Pretrial Disclosures	4/23/2011
Plaintiff's 30-day Trial Period	6/7/2011

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Ends	
Defendant's Pretrial Disclosures	6/22/2011
Defendant's 30-day Trial Period	
Ends	8/6/2011
Plaintiff's Rebuttal Disclosures	8/21/2011
Plaintiff's 15-day Rebuttal Period	
Ends	9/20/2011

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 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.