

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

Mailed: October 23, 2010

Opposition No. 91195847

philosophy, inc.

v.

Levit Labs LLC

**Robert H. Coggins,
Interlocutory Attorney:**

No answer having been timely received, the Board issued notice of default to applicant, on September 23, 2010, allowing it thirty days to show cause why judgment by default should not be entered against it. Now before the Board is applicant's September 30, 2010 motion to set aside the notice of default and applicant's concurrently filed late answer.

By its response, applicant states that, although it received opposer's service copy of the notice of opposition, applicant did not receive the Board's institution order setting the time to answer. Applicant's failure to file a timely answer does not appear to be willful, in bad faith, or unduly prejudicial, but due to a failure to receive the Board's July 28, 2010 institution order. Without evaluating the merits of this case, the Board further finds that applicant's late answer contains a meritorious defense to the complaint inasmuch as it contains a plausible response to

opposer's allegations. The Board is persuaded that the foregoing constitutes good cause to discharge the notice of default and to accept the answer. Fed. R. Civ. P. 55; *Fred Hayman Beverly Hills Inc. v. Jacques Bernier Inc.*, 21 USPQ2d 1556 (TTAB 1991). Accordingly, applicant's motion is granted, the notice of default is set aside, and applicant's answer is noted.

Dates are reset as follows.

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| Deadline for Discovery Conference | 11/19/2010 |
| Discovery Opens | 11/19/2010 |
| Initial Disclosures Due | 12/19/2010 |
| Expert Disclosures Due | 4/18/2011 |
| Discovery Closes | 5/18/2011 |
| Plaintiff's Pretrial Disclosures | 7/2/2011 |
| Plaintiff's 30-day Trial Period Ends | 8/16/2011 |
| Defendant's Pretrial Disclosures | 8/31/2011 |
| Defendant's 30-day Trial Period Ends | 10/15/2011 |
| Plaintiff's Rebuttal Disclosures | 10/30/2011 |
| Plaintiff's 15-day Rebuttal Period Ends | 11/29/2011 |

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 the 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.