

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: November 16, 2016

Opposition No. 91228850

Lacoste Alligator S.A.

v.

Rich C Young

**M. Catherine Faint,
Interlocutory Attorney:**

Answer was due in this case on August 17, 2016. No answer was entered into the record and the Board issued notice of default on August 27, 2016. In response, Applicant explained that he was unable to upload his answer to the Board's electronic file system ESTTA on August 1, 2016, so he mailed his documents via U.S. mail on August 2, 2016. Applicant provided a copy of his postal receipt and tracking number, and provided a printout of the tracking status.

Applicant's responses, however, fail to indicate proof of service on Opposer's counsel, as required by Trademark Rule 2.119. In order to expedite this matter, a copy of Applicant's latest response may be viewed at:

<http://ttabvue.uspto.gov/ttabvue/v?pno=91228850&pty=OPP&eno=7>.¹

¹ Strict compliance with Trademark Rule 2.119 is required in all future filings. When a party files a document that is required to be served upon every other party to the proceeding, proof that required service has been made must be submitted before the Board will consider the filing.

Technical Default Set Aside

Although the answer is somewhat informal, the Board construes the answer as to paragraphs 3-6 and 8-11 as denials to the salient allegations of the complaint.

However the issue of a defendant's failure to file a timely answer is raised, the standard for determining whether default judgment should be entered based on such failure is the Fed. R. Civ. P. 55(c) standard, i.e., whether the defendant has shown good cause why default judgment should not be entered against it. 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, 1557 (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.

The Board finds (1) Applicant has pleaded a meritorious defense by way of its denials asserted in its answer, (2) there is no evidence that Applicant's delay in responding was the result of willful conduct, gross negligence or bad faith, and (3) there is no prejudice to Opposer as the delay is minimal. Accordingly, the Applicant's technical default is **discharged**.

Pro Se Information

The Board notes that Applicant is representing himself in this proceeding. Although Patent and Trademark Rule 11.14 permits an entity to represent itself, it is strongly advisable for a party who is not acquainted with the technicalities of the procedural and substantive law involved in *inter partes* proceedings before the Board to secure the services of an attorney who is familiar with such matters. The United States Patent and Trademark Office (USPTO) cannot aid in the selection of an attorney. As the impartial decision maker, the Board may not provide legal advice; it may provide information solely as to procedure.

Any party who does not retain counsel should be familiar with the authorities governing this proceeding, including the Trademark Trial and Appeal Board Manual of Procedure (TBMP), and the Trademark Rules of Practice (37 C.F.R. Part 2), both accessible directly from the Board's web page: <http://www.uspto.gov/trademarks/process/appeal/index.jsp>. Also on the Board's web page are links to ESTTA, the Board's electronic filing system² at <http://estta.uspto.gov>, and TTABVUE, for case status and prosecution history at <http://ttabvue.uspto.gov/ttabvue>.

Trademark Rules 2.119(a) and (b) require that every paper filed in the USPTO in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney. Proof of service must be made before the paper

² The Board strongly encourages parties to file all papers through ESTTA, which operates in real time and provides a tracking number that the filing has been received. For assistance in using ESTTA, call 571-272-8500.

will be considered by the Board. Accordingly, copies of all papers filed in this proceeding must be accompanied by a signed statement indicating the date and manner in which such service was made. *See* TBMP § 113.03. The statement, whether attached to or appearing on the paper when filed, will be accepted as prima facie proof of service, must be signed and dated, and should take the form of a certificate of service as follows:

I hereby certify that a true and complete copy of the foregoing (insert title of submission) has been served on (insert name of opposing counsel) by mailing said copy on (insert date of mailing), via First Class Mail, postage prepaid (or insert other appropriate method of delivery) to: (name and address of opposing counsel).

Signature _____
Date _____

Strict compliance with the Trademark Rules of Practice, and the Federal Rules of Civil Procedure (where applicable), is required of all parties before the Board, whether or not they are represented by counsel. *See McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, n.2 (TTAB 2006).

This *inter partes* proceeding is similar to a civil action in a federal district court. The parties file pleadings and a range of possible motions. This proceeding includes designated times for disclosures, discovery (discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, to ascertain the facts underlying an adversary's case), a trial period, and the filing of briefs. The Board does not preside at the taking of testimony; all testimony is taken out of the presence of the Board during the assigned testimony, or trial, periods, and the written transcripts thereof, together with any exhibits thereto, are then filed with

the Board. No paper, document, or exhibit will be considered as evidence unless it has been introduced in evidence in accordance with the applicable rules.

Schedule

Proceedings are resumed. Dates are reset as set out below.

Deadline for Discovery Conference	12/17/2016
Discovery Opens	12/17/2016
Initial Disclosures Due	1/16/2017
Expert Disclosures Due	5/16/2017
Discovery Closes	6/15/2017
Plaintiff's Pretrial Disclosures Due	7/30/2017
Plaintiff's 30-day Trial Period Ends	9/13/2017
Defendant's Pretrial Disclosures Due	9/28/2017
Defendant's 30-day Trial Period Ends	11/12/2017
Plaintiff's Rebuttal Disclosures Due	11/27/2017
Plaintiff's 15-day Rebuttal Period Ends	12/27/2017

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.
