

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: August 8, 2017

Opposition No. 91234432

Shazam Entertainment Limited

v.

*W.B. Mason Co., Inc.*¹

Victoria von Vistauxx, Paralegal Specialist:

On June 27, 2017, the Board issued a notice of default to Applicant for its failure to file an answer to the notice of opposition. On June 28, 2017, Applicant filed its response to the notice of default that the default judgment should not be entered against applicant. The said request is uncontested. Trademark Rule 2.127 (a).

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, a 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 the defendant has a meritorious defense. *See Fred Hyman Beverly Hills, Inc. v. Jacques Barnier, Inc.*, 21 USPQ2d 1556 (TTAB 1991). Moreover, because it is the policy of the

¹ Applicant’s notice of appearance of counsel filed concurrent with its response to the notice of default noted and entered.

Board to decide cases on their merits, the Board is reluctant to enter default judgment for failure to file a timely answer, and tends to resolve any doubt on the matter in favor of the defendant. *See Paolo's Associates Limited Partnership v. Paolo Bodo*, 21 USPQ2d 1899 (Comm'r 1990).

In its response to the notice of default, Applicant states that “its counsel of record mistakenly overlooked filing a stipulated request for an extension of time to answer based upon the partes’ settlement discussion.” Applicant further states that “the Opposer in the matter will not be substantially prejudiced by the delay in Applicant’s filing of an Answer. An answer in the matter would have originally been due on June 17, 2017. As Applicant has submitted herewith it’s Answer to the Notice of Opposition and Opposer had already offered to consent to an extension of that deadline, Applicant submits that the delay of just 11 days will not cause substantial prejudice to the Opposer.”

In view of the foregoing, the Board finds that Applicant’s failure to timely answer the notice of opposition was not willful or in bad faith, Opposer will not be prejudiced given that this proceeding is in its early stages and it has conceded to setting aside the notice of default. The Board further finds that Applicant’s answer to the notice of opposition establishes that Applicant has a meritorious defense. Accordingly, the notice of default is hereby set aside, Applicant’s answer to the notice of opposition filed concurrent with its response to the notice of default is accepted as its operative pleading in this proceeding.

In view thereof, the proceedings are resumed and trial dates are reset as follows:

Deadline for Discovery Conference	9/7/2017
Discovery Opens	9/7/2017
Initial Disclosures Due	10/7/2017
Expert Disclosures Due	2/4/2018
Discovery Closes	3/6/2018
Plaintiff's Pretrial Disclosures Due	4/20/2018
Plaintiff's 30-day Trial Period Ends	6/4/2018
Defendant's Pretrial Disclosures Due	6/19/2018
Defendant's 30-day Trial Period Ends	8/3/2018
Plaintiff's Rebuttal Disclosures Due	8/18/2018
Plaintiff's 15-day Rebuttal Period Ends	9/17/2018
Plaintiff's Opening Brief Due	11/16/2018
Defendant's Brief Due	12/16/2018
Plaintiff's Reply Brief Due	12/31/2018
Request for Oral Hearing (optional) Due	2/19/2019

Generally, the Federal Rules of Evidence apply to Board trials. Trial testimony is taken and introduced out of the presence of the Board during the assigned testimony periods. The parties may stipulate to a wide variety of matters, and many requirements relevant to the trial phase of Board proceedings are set forth in Trademark Rules 2.121 through 2.125. These include pretrial disclosures, the manner and timing of taking testimony, matters in evidence, and the procedures for submitting and serving testimony and other evidence, including affidavits, declarations, deposition transcripts and stipulated evidence. Trial briefs shall be submitted in accordance with Trademark Rules 2.128(a) and (b). Oral argument at final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).