**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

DUNN

Mailed: May 9, 2018

Opposition No. 91239465

*Hopkinton Ventures, LLC*

*v.*

*Esperanza Maciel*

**By the Trademark Trial and Appeal Board:**

The case comes up on Opposer's motion filed March 29, 2017 for default judgment. The motion is fully briefed. Proceedings are considered to have been suspended with the filing of the motion.

RELEVANT FACTS

The Board's February 25, 2018 institution and trial order set March 24, 2018 as the deadline for Applicant to file his answer. No answer was filed. On March 24, 2018 Opposer filed a motion for default judgment. On April 25, 2018, Applicant filed his answer and opposition to the motion.

APPLICABLE LEGAL PRINCIPLES

The standard for determining whether default judgment should be entered against the defendant for his failure to file a timely answer to the complaint is the Fed. R. Civ. P. 55(c) standard, which requires that the defendant show good cause why default judgment should not be entered against him. *DeLorme Publishing Co. v.*

*Eartha's Inc.*, 60 USPQ2d 1222, 1223 (TTAB 2000). Good cause usually is found to have been established (1) if the delay in the filing was not the result of willful conduct or gross neglect, (2) if the delay will not result in substantial prejudice to the plaintiff, and (3) if the defendant has a meritorious defense. *Id.* at 1223.

ANALYSIS

In the present case, Applicant asserts that his failure to timely file his answer was based on a combination of circumstances including his failure to keep USPTO informed of his current correspondence information, with the result that his receipt of the notice of opposition was delayed, and the mistaken belief of his co-owner of the business that the opposition would be dismissed as untimely. Applicant points out that he acted promptly to obtain counsel and prepare his answer when he received the motion for default judgment and learned of his error.

The record does not demonstrate that willful conduct or gross neglect by Applicant caused the failure to file the answer or timely respond to notice of default, or that any prejudice to Opposer will result from the late filing. Opposer's choice to file a motion for default judgment in lieu of waiting for the Board to issue notice of default was a voluntary act act which was not prejudicial to Opposer. Prejudice is not equivalent to inconvenience, and Opposer has not alleged that witnesses or evidence have become unavailable due to the passage of time, or that it has suffered any other substantial prejudice. *See DeLorme Publishing Co. v. Eartha's Inc.*, 60 USPQ2d at, 1224. The Board disagrees that the outcome of *DeLorme*, in which the Board entered default

judgment, is applicable here based on the significant difference in the periods of delay. In *DeLorme*, the Board refused to accept the answer after six months, and not the single month of delay involved here. Finally, a meritorious defense does not require the Board to evaluate the merits of the notice of opposition. It is enough that Applicant indicates his belief that he may prevail on the merits. *See* 10A Charles Alan Wright et al., FEDERAL PRACTICE & PROCEDURE § 2697 (4th ed. 2017) ("The underlying concern is to determine whether there is some possibility that the outcome of the suit after a full trial will be contrary to the result achieved by the default.").

DECISION

Opposer's motion for default judgment is DENIED, and Applicant's answer is accepted.

PROCEEDINGS ARE RESUMED

Dates are reset below.

| | |
|---|---|
| Time to Answer | 5/9/2018 |
| Deadline for Discovery Conference | 6/8/2018 |
| Discovery Opens | 6/8/2018 |
| Initial Disclosures Due | 7/8/2018 |
| Expert Disclosures Due | 11/5/2018 |
| Discovery Closes | 12/5/2018 |
| Plaintiff's Pretrial Disclosures Due | 1/19/2019 |
| Plaintiff's 30-day Trial Period Ends | 3/5/2019 |
| Defendant's Pretrial Disclosures Due | 3/20/2019 |
| Defendant's 30-day Trial Period Ends | 5/4/2019 |
| Plaintiff's Rebuttal Disclosures Due | 5/19/2019 |
| Plaintiff's 15-day Rebuttal Period Ends | 6/18/2019 |
| Plaintiff's Opening Brief Due | 8/17/2019 |
| Defendant's Brief Due | 9/16/2019 |
| Plaintiff's Reply Brief Due | 10/1/2019 |

Request for Oral Hearing (optional) Due 10/11/2019

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.l25. An oral hearing will be set only upon request filed as provided by Trademark Rule 2.l29.