

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Alexandria, VA 22313-1451
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January 30, 2019

Opposition No. 91243770

Dabur India Limited

v.

Menovi, LLC

Joi M. Wilson, Paralegal Specialist:

On November 13, 2018, the Board issued a notice of default under Fed. R. Civ. P. 55(a) inasmuch as no answer was of record.

In response thereto, Applicant contends that he was severely injured in an accident and consequently prior to the due date was distracted and unable to direct the filing of Answer in this matter.

Regardless of how the issue of a defendant's failure to timely file its answer is raised, the determination of whether default judgment should be entered against a party is made in accordance with Federal Rule of Civil Procedure 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). 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 (2017).

In view of Applicant's statement that he was distracted and unable to direct the filing of Answer in this matter subsequent to injuries sustained in an accident the Board finds that Applicant's failure to timely answer was neither willful nor in bad faith. Further, there is no evidence of any prejudice to Opposer.

However, because Applicant did not file an answer concurrently with his response to the notice of default, the Board cannot yet determine whether Applicant has a meritorious defense herein. Applicant's request to extend time to file its answer is grant. Applicant is allowed until **thirty days** from the mailing date set forth in this order to file an answer to the Notice of Opposition *See Djeredjian v. Kashi Co.*, 21 USPQ2d 1613, 1615 (TTAB 1991) (the two other factors having been shown, Applicant was allowed time to show meritorious defense by submission of answer). If Applicant files an answer in accordance with this order, the Board will set aside the notice of default.

Except as noted hereinabove, proceedings herein remain suspended.