

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
General Email: TTABInfo@uspto.gov

am/JK

November 6, 2019

Opposition No. 91249656

Societe des Produits Nestle S.A.

v.

JIMSWAREHOUSE-US INC.

By the Board:

On September 10, 2019, the Board issued a notice of default against Applicant, pursuant to Fed. R. Civ. P. 55(a), for its failure to file either an answer to the notice of opposition, or a motion to extend the time to file said answer. *See* 4 TTABVUE. On October 8, 2019, Applicant filed a response to the Board's notice of default.

The standard for determining whether default judgment should be entered against the defendant for its failure to file a timely answer to the complaint is the Fed. R. Civ. P. 55(c) standard. TBMP §§ 312.01 and 508 (June 2019). Pursuant to Fed. R. Civ. P. 55(c), default may be set aside "for good cause." As a general rule, good cause will be found where the applicant's delay has not been willful or in bad faith, where prejudice to the opposer is lacking, and where the applicant has a meritorious defense. *See Fred Hyman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556, 1557 (TTAB 1991).

The Board has reviewed Applicant's submission. The record does not indicate that Applicant acted in bad faith, or for the purpose of delay, or with a lack of diligence toward this proceeding. The Board notes that Applicant has indicated that the parties are negotiating settlement.

On this record, the Board finds good cause to set aside Applicant's default. In view thereof, the Board's September 10, 2019 notice of default is set aside.

Proceedings are resumed. Applicant is allowed until December 6, 2019 to file an answer to the notice of opposition. An answer must be filed through ESTTA, the Board's Electronic System for Trademark Trials and Appeals, and must be served pursuant to Trademark Rule 2.119(a). *See* Trademark Rule 2.106(b)(1).

SCHEDULE

The conference, disclosure, discovery and trial dates are reset as follows:

Time to Answer	12/6/2019
Deadline for Required Discovery Conference	1/5/2020
Discovery Opens	1/5/2020
Initial Disclosures Due	2/4/2020
Expert Disclosures Due	6/3/2020
Discovery Closes	7/3/2020
Plaintiff's Pretrial Disclosures Due	8/17/2020
Plaintiff's 30-day Trial Period Ends	10/1/2020
Defendant's Pretrial Disclosures Due	10/16/2020
Defendant's 30-day Trial Period Ends	11/30/2020
Plaintiff's Rebuttal Disclosures Due	12/15/2020
Plaintiff's 15-day Rebuttal Period Ends	1/14/2021
Plaintiff's Opening Brief Due	3/15/2021
Defendant's Brief Due	4/14/2021
Plaintiff's Reply Brief Due	4/29/2021
Request for Oral Hearing (optional) Due	5/9/2021

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).

TIPS FOR FILING EVIDENCE, TESTIMONY, OR LARGE DOCUMENTS

The Board requires each submission to meet the following criteria before it will be considered: 1) pages must be legible and easily read on a computer screen; 2) page orientation should be determined by its ease of viewing relevant text or evidence, for example, there should be no sideways or upside-down pages; 3) pages must appear in their proper order; 4) depositions and exhibits must be clearly labeled and numbered – use separator pages between exhibits and clearly label each exhibit using sequential letters or numbers; and 5) the entire submission should be text-searchable. Additionally, submissions must be compliant with Trademark Rules 2.119 and 2.126. Submissions failing to meet all of the criteria above may require re-filing. **Note:** Parties are strongly encouraged to check the entire document before filing.¹ The Board will not extend or reset proceeding schedule dates or other deadlines to allow

¹ To facilitate accuracy, ESTTA provides thumbnails to view each page before submitting.

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time to re-file documents. For more tips and helpful filing information, please visit the [ESTTA help](#) webpage.