

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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EJW

August 4, 2020

Opposition No. 91255004

Original Buff, S.A.

v.

Brandon J. Woods

ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:

The Board notes Applicant's motion¹ (filed June 12, 2020) to set aside the notice of default issued on May 21, 2020, 4 TTABVUE. Opposer has not filed a response thereto.

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). Moreover, because it is the policy of the 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).

¹ Applicant is reminded that all papers submitted to the Board must be double-spaced. *See* Trademark Rule 2.126(a)(1).

Applicant has explained that his failure to timely file an answer to the notice of opposition was due the COVID-19 pandemic and his inability to access his office and records. 5 TTABVUE 2. In view thereof, the Board finds that the delay in filing his answer was neither willful nor in bad faith. Further, Opposer has not responded to the motion and, therefore, has not shown substantial prejudice resulting from Applicant's delay in submitting its answer, and the Board finds none.

In view of the foregoing, the notice of default is hereby **SET ASIDE**. 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). Accordingly, Applicant is allowed until **THIRTY (30) DAYS** from the mailing date of this order to file an answer in this proceeding, failing which the Board will issue another notice of default.

Proceedings are **resumed** and trial dates are reset as follows:

Time to Answer	9/4/2020
Deadline for Discovery Conference	10/4/2020
Discovery Opens	10/4/2020
Initial Disclosures Due	11/3/2020
Expert Disclosures Due	3/3/2021
Discovery Closes	4/2/2021
Plaintiff's Pretrial Disclosures Due	5/17/2021
Plaintiff's 30-day Trial Period Ends	7/1/2021
Defendant's Pretrial Disclosures Due	7/16/2021
Defendant's 30-day Trial Period Ends	8/30/2021

Plaintiff's Rebuttal Disclosures Due	9/14/2021
Plaintiff's 15-day Rebuttal Period Ends	10/14/2021
Plaintiff's Opening Brief Due	12/13/2021
Defendant's Brief Due	1/12/2022
Plaintiff's Reply Brief Due	1/27/2022
Request for Oral Hearing (optional) Due	2/6/2022

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, 37 C.F.R. §§ 2.121-2.125. 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), 37 C.F.R. §§ 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), 37 C.F.R. § 2.129(a).

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