

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

wbc

Mailed: January 19, 2021

Opposition No. 91263503

*Tetra GmbH,
Spectrum Brands Pet LLC*

v.

SIDAREVICH, DZMITRY

By the Trademark Trial and Appeal Board:

On August 28, 2020, the Board issued a notice of default for Applicant's failure to file a timely answer. *See* 4 TTABVUE. In response, Applicant filed a motion to set aside default along with its answer on September 28, 2020. *See* 5 TTABVUE. Opposers contest Applicant's motion to set aside default.¹

Default Judgment

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, that "the court may set aside an entry of default for good cause." As a general rule, good cause to set aside a party's default will be found where the party's delay has not been willful or in bad faith, when prejudice to the non-moving party is

¹ The Board has considered the parties' submissions and presumes the parties' familiarity with the factual bases for the motion, and does not recount the facts or arguments here, except as necessary to explain the Board's order. *See Guess? IP Holder LP v. Knowlux LLC*, 116 USPQ2d 2018, 2019-20 (TTAB 2015).

lacking, and where the party 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. TBMP § 312.02 (2020). 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 Paolo's Assocs. Ltd. P'ship v. Paolo Bodo*, 21 USPQ2d 1899 (Comm'r 1990); *id.*

Applicant asserts that its delay was a result of not having received the notice of opposition; and that only through a "routine review of the status of the Applicant's files with the USPTO that [Applicant's] attorney noticed that there was an opposition proceeding pending." 5 TTABVUE 2. Absent circumstances which would cast doubt on the statement, the Board takes at face value a party's assertion that it did not receive a paper. *See Interpayment Svcs. Ltd. v. Docters & Thiede*, 66 USPQ2d 1463, 1464 n.1 (TTAB 2003).

Despite Opposers' contention that Applicant's should have known an opposition would be filed particularly in view of Opposers' prior cease and desist letter, the Board is not persuaded that there is prejudice to Opposers, other than delay, which would result from accepting Applicant's late-filed answer. 6 TTABVUE 5; *see DeLorme Publ'g Co. v. Eartha's Inc.*, 60 USPQ2d 1222, 1224 (TTAB 2001) ("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.”). Given the minimal threshold required to set aside a notice of default, the record is sufficient to establish that Applicant’s delay was not willful or in bad faith. *See Fred Hyman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556, 1557 (TTAB 1991). Further, Applicant’s answer is non-frivolous, denies the salient allegations in the notice of opposition and therefore establishes that Applicant has a meritorious defense. *See DeLorme Pub’g Co.*, 60 USPQ2d at 1224 (“[A]ll that is necessary ... is a plausible response to the allegations contained in the notice of opposition”); *Fred Hyman Beverly Hills, Inc.*, 21 USPQ2d at 1557 (filing of non-frivolous answer showed meritorious defense).

Bearing in mind the Board’s policy of deciding cases on the merits where possible, the Board finds that Applicant’s reasons constitute a sufficient showing of good cause why default judgment should not be entered against Applicant. *See* TBMP § 312.02 (“[T]he Board is very reluctant to enter a default judgment for failure to file a timely answer, and tends to resolve any doubt on the matter in favor of the defendant”). Whether Applicant will prevail in this proceeding is, of course, a matter for trial.

In view thereof, the order to show cause why default should not be entered is hereby discharged. Applicant’s motion to set aside default is **granted**; the notice of **default is set aside**.² Applicant’s answer filed with its response to

² Applicant is advised, however, that the Board will look with disfavor upon any further failure to comply with deadlines set by the Board or the Trademark Rules of Practice.

the Board's notice of default shall be treated as the operative pleading. 5
TTABVUE 7-15.

Schedule

Proceedings are resumed. Dates are reset as follows:

Deadline for Discovery Conference	February 5, 2021
Discovery Opens	February 5, 2021
Initial Disclosures Due	March 7, 2021
Expert Disclosures Due	July 5, 2021
Discovery Closes	August 4, 2021
Plaintiff's Pretrial Disclosures Due	September 18, 2021
Plaintiff's 30-day Trial Period Ends	November 2, 2021
Defendant's Pretrial Disclosures Due	November 17, 2021
Defendant's 30-day Trial Period Ends	January 1, 2022
Plaintiff's Rebuttal Disclosures Due	January 16, 2022
Plaintiff's 15-day Rebuttal Period Ends	February 15, 2022
BRIEFS SHALL BE DUE AS FOLLOWS:	
Plaintiff's Main Brief Due	April 16, 2022
Defendant's Main Brief Due	May 16, 2022
Plaintiff's Reply Brief Due	May 31, 2022

General Information

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

Opposition No. 91263503

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).