

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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November 22, 2022

Opposition No. 91273101 (Parent Case)
Opposition No. 91277598

1661, Inc. d/b/a GOAT

v.

Green Goat LLC

J. Krisp, Interlocutory Attorney:

Opposition No. 91277598 – Notice of Default

On September 15, 2022, the Board issued a notice of default for Applicant's failure to file a timely answer to the notice of opposition, or in the alternative a timely motion to extend time to file an answer, by the September 4, 2022 deadline. 4 TTABVUE. On September 23, 2022, Applicant filed a combined motion to set aside the notice of default and request to accept its late-filed answers. 5 TTABVUE.¹

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. *Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556 (TTAB 1991). Moreover,

¹ Applicant filed a separate answer for each of the three opposed applications. The better and proper practice, if feasible, would have been to file a single answer to the notice of opposition. Trademark Rule 2.104(b); TBMP § 305.01.

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. *Paolo's Assoc. Ltd. P'ship. v. Paolo Bodo*, 21 USPQ2d 1899 (Comm'r 1990).

In its response to the notice of default, Applicant informed the Board, inter alia, that counsel mistakenly calendared the period to file an answer herein as the deadline in the related proceeding, Opposition No. 91277598. 5 TTABVUE 8-9.

Upon full review of the response and the record in total, The Board finds that Applicant's failure to timely answer the notice of opposition was not willful or in bad faith, and finds that Opposer will not suffer prejudice given that this proceeding is in its early stages, Applicant timely responded to the notice of default, and the delay occasioned by Applicant's default has been minimal. Inasmuch as Applicant followed the preferred practice of submitting its answer with its response to the notice of default, the Board can note that it has a meritorious defense to assert.

Based on this record, Applicant has shown the requisite good cause to set aside default for failure to file a timely answer. Accordingly, the notice of default is hereby set aside, and judgment will not be entered against Applicant on the basis of the default. The answers filed on September 23, 2022 are accepted.

Notwithstanding the ruling to set aside the notice of default, Applicant is advised that it is expected to adhere to all future deadlines, including discovery and trial deadlines. Applicant is expected to remain abreast of this proceeding through utilizing TTABVUE. TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE

Opposition Nos. 91273101 (Parent Case); Opposition No. 91277598

(TBMP) § 110.01 (June 2022). The Board may not be inclined to again rule with a liberal approach in the event that Applicant fails to meet a future deadline.

Opposition No. 91273101 – Answer to Amended Notice of Opposition

In the September 2, 2022 order the Board allowed Applicant time to file its answer to the amended notice of opposition. 14 TTABVUE 1. After that deadline, Opposer filed on November 11, 2022 the parties' consent motion to extend discovery and trial dates. 16 TTABVUE. The Board construes this consent motion as indicating consent to set aside Applicant's default for failure to file an answer to the amended notice of opposition. In order to close the pleadings in this proceeding, and because the suspension herein pending Opposer's November 18, 2022 motion to compel renders the consent motion moot, the Board resets time and allows **Applicant thirty days from the date of this order to file its answer to the amended notice of opposition** in Opposition No. 91273101.

Consolidation

When cases involving common questions of law or fact are pending before the Board, the Board may order consolidation of the cases. Fed. R. Civ. P. 42(a); *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991); and *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382 (TTAB 1991). In determining whether to consolidate proceedings, the Board will weigh the savings in time, effort, and expense which may be gained from consolidation, against any prejudice or inconvenience which may be caused thereby. TBMP § 511, and cases cited therein.

Consolidation is discretionary with the Board, and may be ordered upon motion granted by the Board, or upon stipulation of the parties approved by the Board, or upon the Board's own initiative. *See, e.g., Wisconsin Cheese Group, LLC v. Comercializadora de Lacteos y Derivados S.A. de C.V.*, 118 USPQ2d 1262, 1264 (TTAB 2016) (motion to consolidate granted); *Dating DNA LLC v. Imagini Holdings Ltd.*, 94 USPQ2d 1889, 1893 (TTAB 2010) (same); *Venture Out Properties LLC v. Wynn Resorts Holdings LLC*, 81 USPQ2d 1887, 1889 (TTAB 2007) (consolidation ordered sua sponte).

These proceedings involve common parties and some common questions of law and fact. Opposer pleads the ground of likelihood of confusion in each proceeding, and with the recent acceptance of the August 24, 2022 amended notice of opposition filed in Opposition No. 91273101, Opposer relies on a pleading of ownership of the same seven registrations in both proceedings.

The interests of judicial economy and consistency will be served by consolidation, and thus the Board exercises its discretion to consolidate. Fed. R. Civ. P. 42(a). *See also, 8440 LLC v. Midnight Oil Co.*, 59 USPQ2d 1541, 1541 n.1 (TTAB 2001); *Regatta Sport Ltd.*, 20 USPQ2d 1154.

The consolidated cases may be presented on the same record and briefs. *Helene Curtis Indus. Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989); *Hilson Res. Inc. v. Soc. For Human Resource Mgmt.*, 26 USPQ2d 1423 (TTAB 1993).

The Board file will be maintained in **Opposition No. 91273101 as the “parent case.”** From this point forward only one copy of all submissions (briefs, motions, etc.)

should be filed in the parent case only, and the filing must caption both opposition proceedings, listing and identifying the “parent case” first, as in the caption to this order.

Despite being consolidated, each proceeding retains its separate character. The decision on the consolidated cases shall take into account any differences in the issues raised by the respective pleading; and a copy of the decision shall be placed in each proceeding file.

Suspension

Proceedings are **suspended** pending disposition of Opposer’s November 18, 2022 motion to compel discovery and to determine the sufficiency of responses to requests for admission filed in Opposition No. 91273101, except as discussed herein with respect to Applicant’s answer to the amended notice of opposition. 17 TTABVUE. The parties should not file any submission that is not germane to the motion to compel and to determine sufficiency. Trademark Rule 2.120(f)(2).

If any issues raised in the motion are subsequently resolved, the moving party should inform the Board in writing (e.g. in the reply brief) of the issues which no longer require adjudication. Trademark Rule 2.120(f)(1); TBMP § 523.02.

The parties may not serve any additional discovery until the period of suspension is lifted or expires by or under order of the Board. The filing of the motion to compel disclosure or discovery shall not toll the time for a party to comply with any initial disclosure requirement, or to respond to any outstanding discovery requests or to appear for any noticed discovery deposition.

If the motion to compel was filed after the close of discovery, the parties need not make pretrial disclosures until directed to do so by the Board. Trademark Rule 2.120(f)(2); TBMP § 523.01.

The motion to compel will be decided in due course.

TIPS FOR FILING EVIDENCE, TESTIMONY, OR LARGE DOCUMENTS

It is the responsibility of each party to ensure that the Board has the party's current correspondence address, including an email address, at all times. TBMP § 117.07.

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.² The Board will not extend or reset proceeding schedule dates or other deadlines to allow time to re-file documents. For more tips and helpful filing information, please visit the ESTTA help webpage.