

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
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January 11, 2023

Opposition No. 91279885

*Hachette Filipacchi Presse*

*v.*

*Blueco, LLC*

**Nicole Thier, Paralegal Specialist:**

Applicant's answer was due on November 5, 2022. Inasmuch as Applicant did not file an answer by the due date nor did it file a timely request to extend its time to answer, the Board issued a notice of default on November 16, 2022. On December 5, 2022, Applicant filed its response to the Board's default notice concurrently with its answer.

In its response, Applicant's counsel contends its failure to file a timely answer was an inadvertent oversight, inasmuch as Applicant was not aware of the proceeding until it was uncovered during research. Furthermore, Applicant states that its actions were not of willful conduct or gross neglect, noting that Applicant filed its response to the Board's order quickly upon discovery of the proceeding.

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: "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).

In this case, the Board finds that Opposer is not prejudiced by Applicant's late filing. Moreover, the Board finds that the reasons for Applicant's delay were not in bad faith.

In view of the foregoing, default is hereby set aside and Applicant's answer to the notice of opposition is noted and accepted.

Trial dates are reset as follows:

Deadline for Discovery Conference	2/10/2023
Discovery Opens	2/10/2023
Initial Disclosures Due	3/12/2023
Expert Disclosures Due	7/10/2023
Discovery Closes	8/9/2023
Plaintiff's Pretrial Disclosures Due	9/23/2023
Plaintiff's 30-day Trial Period Ends	11/7/2023
Defendant's Pretrial Disclosures Due	11/22/2023
Defendant's 30-day Trial Period Ends	1/6/2024
Plaintiff's Rebuttal Disclosures Due	1/21/2024
Plaintiff's 15-day Rebuttal Period Ends	2/20/2024
Plaintiff's Opening Brief Due	4/20/2024
Defendant's Brief Due	5/20/2024
Plaintiff's Reply Brief Due	6/4/2024
Request for Oral Hearing (optional) Due	6/14/2024

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, matters in evidence, the manner and timing of taking testimony, 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.<sup>1</sup> 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.

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<sup>1</sup> To facilitate accuracy, ESTTA provides thumbnails to view each page before submitting.