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am/KGC

November 26, 2024

Opposition No. 91291363

Boy Scouts of America

v.

Toro International, LLC

By the Trademark Trial and Appeal Board:

On October 28, 2024, the Board issued to Applicant a notice of default under Fed. R. Civ. P. 55(a) after Applicant failed to timely answer the notice of opposition or move to extend the time in which to do so. 13 TTABVUE.[1] Applicant was given time to show cause why default judgment should not be entered against it under Fed. R. Civ. P. 55(b). *Id.*

[1] In this order, citations to the record are to TTABVUE, the Board's online docketing system. *See Turdin v. Trilobite, Ltd.*, Conc. Use No. 94002505, 2014 WL 343270, at *2 n.6 (TTAB 2014); *see also* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 106.03 (2024). Specifically, the number preceding TTABVUE corresponds to the docket entry number, and any number(s) following TTABVUE refer to the page number(s) of the docket entry where the cited materials appear. The Board expects the parties to use this method of citing to the record throughout this proceeding.

As part of an internal Board pilot citation program on broadening acceptable forms of legal citation in Board cases, the citation form in this order is in a form provided in TBMP § 101.03. This order cites decisions of the U.S. Court of Appeals for the Federal Circuit and the U.S. Court of Customs and Patent Appeals only by the page(s) on which they appear in the Federal Reporter (e.g., F.2d, F.3d, or F.4th). For decisions of the Board, this order employs citation to the Westlaw (WL) database. Practitioners should also adhere to the practice set forth in TBMP § 101.03.

Applicant timely moved to set aside the notice of default (14-17 TTABVUE), and, thereafter, filed its answer to the notice of opposition (18 TTABVUE). As an initial matter, Applicant filed four such motions, but the Board will consider only the latest-filed one (17 TTABVUE), per Applicant's request (*id.* at 3). Notwithstanding, the parties are expected to ensure that their submissions in this proceeding are complete and accurate before they are filed.

Under Fed. R. Civ. P. 55(c), the Board "may set aside an entry of default for good cause." "This good cause is usually found to have been established if the delay in filing is not the result of willful conduct or gross neglect on the part of the defendant, if the delay will not result in substantial prejudice to the plaintiff, and if the defendant has a meritorious defense." *Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, Opp. No. 91084521, 1991 WL 332557, at *1 (TTAB 1991) (citation omitted). "[T]he Board [is] reluctant to grant judgments by default and tend to resolve doubt in favor of setting aside a default, since the law favors deciding cases on their merits." *Paolo's Assocs. v. Bodo*, Can. No. 92018242, 1990 WL 358312, at *3 (Comm'r of Pats. & Trademarks 1990) (citations omitted). "A motion to set aside a default is addressed to the sound discretion of the" Board. *Id.*

There is no evidence of prejudice, let alone substantial prejudice, to Opposer.[2] *Cf. Pumpkin, Ltd. v. Seed Corps.*, Opp. No. 91099224, 1997 WL 397495, at *6 (TTAB 1997) (in the context of excusable neglect, prejudice concerns a party's ability to

[2] In fact, Opposer consented to a thirty-day extension of Applicant's answer deadline of October 15, 2024. 17 TTABVUE 9.

prosecute claims or defend against them, e.g., loss of witnesses or evidence). Though Applicant was neglectful in its inaction, there is no evidence that this neglect was gross or that Applicant acted willfully.[3] Lastly, Applicant has a meritorious defense by way of filing a non-frivolous answer that denies the salient allegations in the notice of opposition. 18 TTABVUE; *Fred Hayman Beverly Hills*, 1991 WL 332557, at *2 ("[B]y the submission of an answer which is not frivolous, applicant has adequately shown that it has a meritorious defense.").

Accordingly, for good cause shown, Applicant's motion to set aside the notice of default is **granted**, the notice of default is **set aside**, any default arising therefrom is **discharged**, and the late-filed answer is **accepted** as Applicant's operative pleading in this proceeding.

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

Deadline for Discovery Conference	12/26/2024
Discovery Opens	12/26/2024
Initial Disclosures Due	1/25/2025
Expert Disclosures Due	5/25/2025
Discovery Closes	6/24/2025
Plaintiff's Pretrial Disclosures Due	8/8/2025
Plaintiff's 30-day Trial Period Ends	9/22/2025
Defendant's Pretrial Disclosures Due	10/7/2025
Defendant's 30-day Trial Period Ends	11/21/2025
Plaintiff's Rebuttal Disclosures Due	12/6/2025
Plaintiff's 15-day Rebuttal Period Ends	1/5/2026
Plaintiff's Opening Brief Due	3/6/2026
Defendant's Brief Due	4/5/2026
Plaintiff's Reply Brief Due	4/20/2026
Request for Oral Hearing (optional) Due	4/30/2026

[3] In particular, in a declaration accompanying Applicant's motion, Applicant counsel states that he "did not click the 'Submit' button to complete the filing process" for a motion to extend the time to answer the notice of opposition. *Id.* at 7, ¶ 7.

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). Such briefs should utilize citations to the TTABVUE record created during trial, to facilitate the Board's review of the evidence at final hearing. *See* TBMP § 801.03. 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.[4] 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.

[4] To facilitate accuracy, ESTTA provides thumbnails to view each page before submitting.