UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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MCF/ey

December 10, 2024

Opposition No. 91294041

DK Company A/S[1]

v.

La Crème The Brand

By the Trademark Trial and Appeal Board:

Applicant's answer to the notice of opposition was due on October 27, 2024. Although a notice of default did not issue, Applicant is technically in default for failure to file an answer by October 27, 2024. TBMP § 312.01.

On October 31, 2024, Applicant filed its answer to the notice of opposition and a motion to set aside default and accept its late filed answer. The motion is uncontested. Trademark Rule 2.127(a).

Pursuant to Fed. R. Civ. P. 55(c), default may be set aside "for good cause shown." As a general rule, good cause to set aside an applicant's default will be found where the applicant's delay has not been willful or in bad faith, where prejudice to the opposer is lacking, and where the applicant has a meritorious defense. Moreover, the Board is reluctant to enter default judgment for failure to file a timely answer

[1] Opposer's change of correspondence address filed on November 7, 2024 is noted.

inasmuch as the law favors deciding cases on their merits. The Board tends to resolve any doubt on the matter of default in favor of the defendant.

Inasmuch as the record indicates that Applicant's failure to timely answer the notice of opposition was not willful or in bad faith, Opposer will not suffer prejudice given that this proceeding is in its early stages, and Applicant seeks to set forth a meritorious defense to the allegations, Applicant's default for failure to file an answer by October 27, 2024, is hereby set aside. Applicant's motion is granted and the late-filed answer is accepted and is its operative pleading.

The proceeding schedule is reset as follows:[2]

Deadline for Discovery Conference	1/6/2025
Discovery Opens	1/6/2025
Initial Disclosures Due	2/5/2025
Expert Disclosures Due	6/5/2025
Discovery Closes	7/5/2025
Plaintiff's Pretrial Disclosures Due	8/19/2025
Plaintiff's 30-day Trial Period Ends	10/3/2025
Defendant's Pretrial Disclosures Due	10/18/2025
Defendant's 30-day Trial Period Ends	12/2/2025
Plaintiff's Rebuttal Disclosures Due	12/17/2025
Plaintiff's 15-day Rebuttal Period Ends	1/16/2026
Plaintiff's Opening Brief Due	3/17/2026
Defendant's Brief Due	4/16/2026
Plaintiff's Reply Brief Due	5/1/2026
Request for Oral Hearing (optional) Due	5/11/2026

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

[2] Opposer's motion for extension filed on December 1, 2024 is moot.

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.[3] 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.

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