

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

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Mailed: September 29, 2007

Cancellation No. 92047210

Nomadic, Inc.

v.

The Noman Company B.V.

Cheryl Goodman, Interlocutory Attorney:

Answer was due, as last reset, on June 17, 2007. On August 21, 2007, the Board issued a notice of default for failure of respondent to timely file its answer. Respondent was allowed time to show cause why judgment should not be entered against it in accordance with Fed. R. Civ. P. 55(b).

On September 7, 2007 respondent filed a response to the notice of default accompanied by its answer.

In support of setting aside default, respondent states that its failure to file an answer to the petition to cancel was not willful but was due to its receipt by non-English speaking individuals, who do not have an effective understanding of the procedures of the Trademark Trial and Appeal Board. Respondent also maintains that petitioner

will not be substantially prejudiced by the delay and that respondent has a meritorious defense as evidenced by the filing of its answer which accompanies its response to the notice of default.

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 and 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 the defendant has a meritorious defense. *See Fred Hyman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556 (TTAB 1991). Moreover, the Board is reluctant to grant judgments by default, since the law favors deciding cases on their merits. *See Paolo's Associates Limited Partnership v. Paolo Bodo*, 21 USPQ2d 1899 (Comm'r 1990).

Upon consideration of respondent's response to the notice of default, the Board is persuaded that respondent has established good cause to set aside the entry of default. First, there is no evidence that respondent's failure to timely answer the petition to cancel was either willful or the result of gross neglect. Second, delay

alone is insufficient to establish prejudice to petitioner. Lastly, respondent, by filing its answer to the petition to cancel, respondent has established a potentially meritorious defense.

In view thereof, the notice of default is set aside and respondent's answer is accepted.

Discovery and trial dates are reset as follows:

THE PERIOD FOR DISCOVERY TO CLOSE:	12/12/2007
30-day testimony period for party in position of plaintiff to close:	6/9/2008
30-day testimony period for party in position of defendant to close:	8/8/2008
15-day rebuttal testimony period for plaintiff to close:	9/22/2008

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b).

An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

**NEWS FROM THE TTAB:**

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:

<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>  
[http://www.uspto.gov/web/offices/com/sol/notices/72fr42242\\_FinalRuleChart.pdf](http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf)

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>