

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

Mailed: October 16, 2007

Cancellation No. 92047521

Danli Tobacco Shop Inc.

v.

P.S. Export Company, LLC

**Robert H. Coggins,  
Interlocutory Attorney:**

No answer having been timely received, the Board issued notice of default to respondent, on July 10, 2007, allowing it thirty days in which to show cause why judgment should not be entered against it. Now before the Board is respondent's July 18, 2007 response to the notice of default.<sup>1</sup>

By way of its response, respondent claims that it had no prior knowledge of the controversy herein, and that such controversy was to be handled by an attorney who is no longer employed by the law firm respondent retains. The Board notes, however, that the order instituting this proceeding and a copy

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<sup>1</sup> Respondent's communication does not indicate proof of service of a copy of same on petitioner as required by Trademark Rule 2.119 (which is more fully explained later in this order). In order to expedite this matter, petitioner is directed to the following URL where it may view a copy of the filing:  
<http://ttabvueint.uspto.gov/ttabvue/v?pno=92047521&pty=CAN&eno=5>

Strict compliance with Trademark Rule 2.119 is required by respondent in all further papers filed with the Board.

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of the petition to cancel were mailed directly to respondent, not to respondent's previous attorney, in accordance with Trademark Rule 2.133 and TBMP Section 310.01 (2d ed. rev. 2004). The mailing of correspondence in accordance with standard Board mailing procedures creates a presumption of receipt of correspondence.<sup>2</sup> See *Jack Lenor Larsen Inc. v. Chas. O. Larson Co.*, 44 USPQ2d 1950, 1953 (TTAB 1997).

To the extent respondent's July 18, 2007 filing intends to show good cause why default judgment should not be entered against respondent, it fails provide sufficient detail as to respondent's conduct, delay, and possible defenses to the notice of opposition. Good cause why default judgment should not be entered against a defendant, for failure to file a timely answer to the complaint, is usually found when the defendant shows that (1) the delay in filing an answer was not the result of willful conduct or gross neglect on the part of the defendant, (2) the plaintiff will not be substantially prejudiced by the delay, and (3) the defendant has a meritorious defense to the action. See *Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556 (TTAB 1991); and *DeLorme Publishing Co v. Eartha's Inc.*, 60 USPQ2d 1222, 1224 (TTAB 2000).

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<sup>2</sup> Notwithstanding this presumption, respondent is directed to the following URL where it may view a copy of the petition to cancel:

<http://ttabvueint.uspto.gov/ttabvue/v?pno=92047521&pty=CAN&eno=1>

Federal R. Civ. P. 8(b), which is made applicable to this proceeding by Trademark Rule 2.116(a), provides, in part:

A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder.

The petition to cancel filed by petitioner Danli Tobacco Shop Inc. consists of four<sup>3</sup> numbered paragraphs setting forth the basis of petitioner's claim of damage. In accordance with Fed. R. Civ. P. 8(b) it is incumbent on respondent to answer the petition to cancel by admitting or denying the allegations contained in each paragraph. If respondent is without sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, it should so state and this will have the effect of a denial.

Responses Due

Notice of default under Fed. R. Civ. P. 55(a) is **maintained**. Respondent is allowed until **THIRTY DAYS** from the mailing date of this order to file (1) a response showing good cause why default judgment should not be entered against it,

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<sup>3</sup> There are only four numbered paragraphs in the petition to cancel. Petitioner mislabeled the paragraphs by leaving out the number "3." The paragraphs are numbered 1, 2, 4, and 5.

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and (2) an answer that complies with Rule 8(b) of the Federal Rules of Civil Procedure.

Pro Se Information

As noted earlier in this order at footnote 1, Trademark Rules 2.119(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney, and proof of such service must be made before the paper will be considered by the Board. Consequently, copies of all papers which respondent may subsequently file in this proceeding, including its response showing good cause and its answer to the petition for cancellation, must be accompanied by a signed statement indicating the date and manner in which such service was made. The statement, whether attached to or appearing on the paper when filed, will be accepted as prima facie proof of service. See TBMP Sections 113 *et seq.* (2d ed. rev. 2004).

Respondent will be expected to comply with all applicable rules and Board practices during the remainder of this case. It should be noted that while Patent and Trademark Rule 10.14 permits authorized officers to represent a corporation, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in an opposition proceeding to secure the services of

an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney.

If respondent does not retain counsel, then respondent will have to familiarize itself with the rules governing this proceeding. The Trademark Rules are codified in part two of Title 37 of the Code of Federal Regulations (also referred to as the CFR). The CFR and the Federal Rules of Civil Procedure are likely to be found at most law libraries and may be available at some public libraries. The Board's manual of procedure will also be helpful.

On the World Wide Web, respondent may access most of these materials by logging onto <http://www.uspto.gov> and making the connection to trademark materials.

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel.

Dates Reset

Discovery is open. The close of discovery and trial dates are reset as follows.

Discovery period to close:	3/28/08
30-day testimony period for party in position of plaintiff to close:	6/26/08
30-day testimony period for party in position of defendant to close:	8/25/08
15-day rebuttal testimony period to close:	10/9/08

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>