

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

Mailed: January 24, 2009

Cancellation No. 92047998

Lamsia Corporation

v.

Cigar Oasis, Inc.

Cheryl Goodman, Interlocutory Attorney:

On December 22, 2008, respondent was ordered to show cause why default judgment should not be entered against it in accordance with Fed. R. Civ. P. 55(b) due to respondent's failure to file an answer. On January 22, 2009, respondent filed its response to the notice of default.

Good cause for discharging default is generally found if (1) the delay in filing is not the result of willful conduct or gross neglect, (2) the delay will not result in substantial prejudice to the opposing party, and (3) the defendant has a meritorious defense. *Fred Hayman Beverly Hills Inc. v. Jacques Bernier Inc.*, 21 USPQ2d 1556 (TTAB 1991).

Upon consideration of respondent's filing, the Board finds respondent has established that it was not willfully ignoring the matter but, rather, that the parties were attempting to settle the matter and then subsequently, other intervening factors resulted in the failure to file an

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answer. The Board also finds there is no prejudice to petitioner from the delay.

However, the Board does find that although respondent has indicated a desire to defend this action (requesting that "these proceedings be reset and resumed . . . to protect its rights and interest in its long-standing trademark"), it has failed to offer a meritorious defense which is necessary to establish good cause to set aside default. Such defense could have been established by filing its answer to the petition to cancel in conjunction with its response to the notice of default. *See e.g., Mathon v. Marine Midland Bank, N.A.*, 875 F.Supp. 986, 993 (E.D.N.Y.1995) ("A meritorious defense is established by Rule 55 standards by setting forth denials and defenses in an answer").

Nevertheless, inasmuch as it is the Board's policy to decide cases on its merits and because respondent has satisfied two of the three factors for setting aside default, respondent is allowed until THIRTY DAYS from the mailing date of this order to supplement its response to the notice of default by filing its proposed answer to establish a meritorious defense or submitting a supplemental response setting forth a meritorious defense. *See Mike Rosen & Assocs., P.C. v. Omega Builders, Ltd.*, 940 F.Supp. 115 (E.D.Pa.1996) (court conditioned granting of motion to set

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aside default on subsequent submission of prima facie evidence of meritorious defense).

If respondent's answer or supplemental filing establishes a meritorious defense, entry of default will be set aside and appropriate dates will be reset. Otherwise, default judgment will be entered for failure of respondent to establish good cause to set aside default.

Proceedings herein are otherwise suspended pending further submission from respondent.

\* \* \* \*

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>