

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

Mailed: March 29, 2010

Cancellation No. 92051940

E.A. Sween Company

v.

CE Restaurant Holdings, L.L.C.<sup>1</sup>

**Frances S. Wolfson, Interlocutory Attorney:**

On March 10, 2010, the Board issued a notice of default in view of respondent's failure to timely answer the petition to cancel. On March 23, 2010, respondent filed a response to the notice of default, together with its answer to the petition to cancel. For the reasons discussed below, we hereby set aside the notice of default.

The record shows that respondent's failure to file a timely answer in the cancellation proceeding was neither willful nor unduly prejudicial, but due to assignment of the mark and respondent's change of address. Respondent's Manager attests that respondent did not receive the petition to cancel until after the date for responding had passed. Thereupon, respondent moved quickly to file its answer and respond to the notice of default. Respondent's failure to

**Cancellation No. 92051940**

file a timely answer in the cancellation proceeding was neither willful nor unduly prejudicial. Moreover, by filing its answer, respondent has shown that it has a meritorious defense to the action. See *Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556 (TTAB 1991).

Accordingly, good cause having been shown, the notice of default is hereby set aside. Respondent's answer is accepted and entered into the record.

Trial dates, including conferencing, disclosures and the close of discovery, are reset as indicated below.

Deadline for Discovery Conference	4/19/2010
Discovery Opens	4/19/2010
Initial Disclosures Due	5/19/2010
Expert Disclosures Due	9/16/2010
Discovery Closes	10/16/2010
Plaintiff's Pretrial Disclosures Due	11/30/2010
Plaintiff's 30-day Trial Period Ends	1/14/2011
Defendant's Pretrial Disclosures Due	1/29/2011
Defendant's 30-day Trial Period Ends	3/15/2011
Plaintiff's Rebuttal Disclosures Due	3/30/2011
Plaintiff's 15-day Rebuttal Period Ends	4/29/2011

**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.

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<sup>1</sup> By assignment from Café Express, LLC; recorded at Reel/Frame Nos. 4169/0158 on March 18, 2010.

**Cancellation No. 92051940**

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.