

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: May 1, 2017

Cancellation No. 92063374

E.A. Sween Company

v.

Van's International Foods, Inc.

Nicole Thier, Paralegal Specialist:

Respondent's answer was due May 17, 2016. Inasmuch as Respondent did not file an answer by the due date nor did it file a timely request to extend its time to answer, the Board issued a notice of default on May 31, 2016. On July 11, 2016, the Board entered default judgment against Respondent and granted the petition to cancel.

On July 12, 2016 however, Respondent filed a motion for relief from judgment with the Board's concurrently with its answer.

In its motion, Respondent counsel contends that Respondent's failure to file a timely answer was an oversight due to clerical errors in keeping active mailing addresses on file. Respondent was not aware of any deadlines until Respondent received an email from the Board entering default judgment.

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 an 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 defendant has a meritorious defense. *See Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556 (TTAB 1991).

In this case, the Board finds that Petitioner is not prejudiced by the late filing, especially inasmuch as Petitioner has not filed a response in opposition to Respondent’s motion. Moreover, the Board finds that the reasons for Respondent’s delay were not willful or in bad faith.

In view of the foregoing, default is hereby set aside and Respondent’s answer to the petition to cancel is noted and accepted.¹

Discovery, conferencing and disclosure deadlines, as well as trial dates are reset as indicated below:

Deadline for Discovery Conference	5/31/2017
Discovery Opens	5/31/2017
Initial Disclosures Due	6/30/2017
Expert Disclosures Due	10/28/2017
Discovery Closes	11/27/2017
Plaintiff's Pretrial Disclosures Due	1/11/2018
Plaintiff's 30-day Trial Period Ends	2/25/2018
Defendant's Pretrial Disclosures Due	3/12/2018
Defendant's 30-day Trial Period Ends	4/26/2018
Plaintiff's Rebuttal Disclosures Due	5/11/2018
Plaintiff's 15-day Rebuttal Period Ends	6/10/2018
Plaintiff's Opening Brief Due	8/9/2018
Defendant's Brief Due	9/8/2018
Plaintiff's Reply Brief Due	9/23/2018

¹ The Board apologizes for the delay in action on Respondent’s motions.

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.

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 Trademark Rules 2.121 through 2.125. These include pretrial disclosures, the manner and timing of taking testimony, matters in evidence, 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).