

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

mbm

Mailed: September 18, 2017

Cancellation No. 92066243

S & G Hampton Sun, LLC

v.

Babyhampton, LLC

By the Trademark Trial and Appeal Board:

This proceeding comes before the Board for consideration of Babyhampton, LLC's ("Respondent") motion (filed July 25, 2017) to "extend" its time by six months to file an answer to S & G Hampton Sun, LLC's June 7, 2017 petition to cancel. On July 26, 2017, Petitioner filed a response opposing Respondent's motion to extend.

As an initial matter, the deadline for filing an answer, as set by the Board's June 7, 2017 institution order, was July 17, 2017. Respondent's motion was filed after the deadline for filing an answer to the petition to cancel. Accordingly, the Board construes Respondent's motion as one to reopen its time in which to file an answer.

A party that seeks to reopen a period that has already expired must show that its failure to act during the time allowed therefor was the result of excusable neglect, unless the expired deadline is the deadline for filing an answer, in which case the defendant need only demonstrate good cause. TBMP§ 509.01. To show good cause, the moving party must set forth with particularity the facts allegedly constituting

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good cause and must demonstrate that the request is not necessitated by the moving party's own lack of diligence or unreasonable delay. *See Nat'l Football League v. DNH Mgmt, LLC*, 85 USPQ2d 1852, 1854 (TTAB 2008). Here, the Board does not find any evidence of lack of diligence or an unreasonable delay, particularly where Respondent filed its motion only one week after the deadline had passed.

Insofar as Respondent failed to timely file an answer to the petition to cancel or seek an extension of time, Respondent is in technical default. The Board is very reluctant to enter default judgment for failure to file a timely answer and tends to resolve any doubt on the matter in favor of the defendant. TBMP § 312.02 (June 2017). 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 Hyman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556 (TTAB 1991).

Here, Respondent's motion states that it needs time to determine if it will proceed *pro se* and/or to obtain legal representation. Respondent has set forth facts sufficient to demonstrate good cause to set aside the technical default and to reopen its time for filing an answer, to the extent noted below. The Board does not find any evidence that Respondent's delay was willful or in bad faith. Moreover, the Board does not find any significant prejudice to Petitioner aside from the slight delay in this proceeding. Furthermore, by filing its motion, it is clear Respondent intends to defend its registration against the petition to cancel. Finally, it is well-established that a trial

on the merits is favored over a default judgment. *See, e.g., Information Sys. And Networks Corp. v. U.S.*, 994 F.2d 792, 795 (Fed. Cir. 1993).

In view thereof, Respondent's construed motion to set aside default and reopen is **GRANTED**, to the extent that Respondent is allowed until **40 days** from the mailing date of this order in which to file and serve an answer to the petition to cancel. Although the Board is mindful of the fact that Respondent is currently proceeding *pro se*, based on the information currently before the Board, the Board does not find that Respondent has established good cause to extend its time to answer by an additional six months.

Pro Se Information

It is noted that Respondent appears to intend to represent itself in this proceeding. While Patent and Trademark Rule 11.14 permits any person to represent itself, it is strongly advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in *inter partes* proceedings before the Board 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. *See* TBMP § 114.02.

Trademark Rules 2.119(a) and (b) require that every submission filed in a proceeding before the Board must be served upon the other party or parties, and proper proof of such service must be made before the submission will be considered by the Board. Accordingly, all submissions filed in this proceeding must be accompanied by a statement, signed by the attorney or other authorized representative, attached to or appearing on the original submission when filed,

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clearly stating the date and manner in which service was made, the name of each party or person upon whom service was made, and the email address or address. *See* TBMP § 113.03. Service must be made by email unless otherwise stipulated, or unless the filing party has satisfied the requirements for another method of service as set forth in Trademark Rule 2.119(b). The statement will be accepted as prima facie proof of service, must be signed and dated, and should take the form of a Certificate of Service as follows:

I hereby certify that a true and complete copy of the foregoing (insert title of submission) has been served on (insert name of opposing counsel or party) by forwarding said copy on (insert date of mailing), via email (or insert other appropriate method of delivery) to: (set out name, address, and email address of opposing counsel or party).

Signature _____
Date _____

Submissions in Board proceedings must be made via ESTTA, the Electronic System for Trademark Trials and Appeals, and must be in compliance with Trademark Rules 2.126(a) and (b). *See* TBMP § 110.01. The ESTTA user manual, ESTTA forms, and instructions for their use are at <http://estta.uspto.gov/>.

It is recommended that any pro se party be familiar with the latest edition of Chapter 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice. Parties should also be familiar with the Trademark Trial and Appeal Board Manual of Procedure (TBMP), available at <http://www.uspto.gov/trademarks-application-process/trademark-trial-and-appeal-board-ttab>, the TTABVUE system

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for viewing the record for all Board proceedings, available at <http://ttabvue.uspto.gov/ttabvue/>, and the Standard Protective Order, available at <https://www.uspto.gov/trademarks-application-process/appealing-trademark-decisions/standard-documents-and-guidelines-0>.

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is required of all parties, whether or not they are represented by counsel. *McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, n.2 (TTAB 2006), *aff'd unpub'd*, 240 Fed. Appx.865 (Fed. Cir. 2007), *cert. denied*, 552 U.S. 1109 (2008).

Trial Schedule

Deadline for Discovery Conference	November 28, 2017
Discovery Opens	November 28, 2017
Initial Disclosures Due	December 28, 2017
Expert Disclosures Due	April 27, 2018
Discovery Closes	May 27, 2018
Plaintiff's Pretrial Disclosures Due	July 11, 2018
Plaintiff's 30-day Trial Period Ends	August 25, 2018
Defendant's Pretrial Disclosures Due	September 9, 2018
Defendant's 30-day Trial Period Ends	October 24, 2018
Plaintiff's Rebuttal Disclosures Due	November 8, 2018
Plaintiff's 15-day Rebuttal Period Ends	December 8, 2018
BRIEFS SHALL BE DUE AS FOLLOWS:	
Plaintiff's Main Brief Due	February 6, 2019
Defendant's Main Brief Due	March 8, 2019
Plaintiff's Reply Brief Due	March 23, 2019

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

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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).