

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: November 20, 2017

Cancellation No. 92066578

Refit Revolution, LLC

v.

Noots Nutrition, LLC

Nicole Thier, Paralegal Specialist:

Respondent's answer was due, as last reset, on September 16, 2017. 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 September 26, 2017. On October 26, 2017, Respondent filed its response to the Board's default notice concurrently with its answer.

In its response, Respondent's counsel states that Respondent's failure to file a timely answer was not of willful conduct or gross neglect but due to an unforeseen hospitalization of Respondent's counsel. Respondent has informed the Board that Respondent has retained new counsel, which has been made of record.

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 Respondent's late filing, 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. Trial dates are reset as indicated below.

Deadline for Discovery Conference	12/20/2017
Discovery Opens	12/20/2017
Initial Disclosures Due	1/19/2018
Expert Disclosures Due	5/19/2018
Discovery Closes	6/18/2018
Plaintiff's Pretrial Disclosures Due	8/2/2018
Plaintiff's 30-day Trial Period Ends	9/16/2018
Defendant's Pretrial Disclosures Due	10/1/2018
Defendant's 30-day Trial Period Ends	11/15/2018
Plaintiff's Rebuttal Disclosures Due	11/30/2018
Plaintiff's 15-day Rebuttal Period Ends	12/30/2018
Plaintiff's Opening Brief Due	2/28/2019
Defendant's Brief Due	3/30/2019
Plaintiff's Reply Brief Due	4/14/2019

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 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

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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).