

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Baxley

Mailed: March 30, 2018

Cancellation No. 92067609

Cancellation No. 92067670

*David B. Eaves and Chicago Stagehand,
LLC*

v.

*Theatrical Stage Employees Union Local No.
2 of the International Alliance of Theatrical
Stage Employees and Moving Picture
Technicians, Artist and Allied Crafts of the
United States and Canada*

(as consolidated)

Andrew P. Baxley, Interlocutory Attorney:

On February 28, 2018, the Board issued a notice of default under Fed. R. Civ. P. 55(a) in Cancellation No. 92067670 because no answer was of record. In addition to responding to the notice of default, Respondent, on March 27, 2018, filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6) for failure to state a claim and its answer.

In response, Respondent contends that it did not receive the petition to cancel.

However the issue of default for failure to timely answer is raised, the determination of whether default judgment should be entered against a party is made 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). The determination of whether default judgment should be entered against a party lies within the Board's sound discretion. In exercising that discretion, the Board is mindful of its policy to decide cases on their merits where possible and therefore only reluctantly enters judgment by default for failure to timely answer. *See* TBMP § 312.02 (June 2017).

As a result of amendments to the Trademark Rules of Practice that became effective on January 14, 2017, plaintiffs in Board proceedings are no longer required to serve the complaint upon defendants. Rather, service of the petition to cancel herein was made by way of the link to the Board's TTABVUE database set forth on page 1 of the Board notice instituting this proceeding. 2 TTABVUE 1 ("This notice of institution is forwarded pursuant to Trademark Rules 2.113(b) and (c), and constitutes service of the petition to cancel on [R]espondent."). The Board sent the institution notice directly to Respondent through the mail. *See* TBMP § 310.01.

In view of the foregoing, the Board will treat the response to the notice of default as alleging nonreceipt of the institution notice and, therefore, finds that Respondent's failure to timely answer was inadvertent. The Board further finds that there is no indication of prejudice to Petitioner, and Respondent has set forth a meritorious defense by way of the denials in its answer. Based on the following, the Board finds that Respondent has shown good cause to set aside the notice of default. The notice of default is hereby set aside, and Respondent's answer is accepted.

Because the above-captioned proceedings involve the same parties and common questions of law or fact, the Board hereby orders their consolidation. *See* Fed. R. Civ. P. 42(a); *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991); *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382 (TTAB 1991); TBMP § 511 (2017). The consolidated cases may be presented on the same record and briefs. *See Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989); *Hilson Research Inc. v. Society for Human Resource Management*, 26 USPQ2d 1423 (TTAB 1993).

The Board file will be maintained in Cancellation No. 92067609 as the “parent” case. As a general rule, from this point onward, only a single copy of any submission should be filed herein. That copy, however, should include both consolidated proceeding numbers in the caption thereof.

Despite being consolidated, each proceeding retains its separate character. The decision on the consolidated cases shall take into account any differences in the issues raised by the respective pleading; a copy of the decision shall be placed in each proceeding file.

Respondent filed separate motions to dismiss in Cancellation Nos. 92067609 (on March 13, 2018) and 92067670 (on March 27, 2018). In the interest of judicial economy and in exercising its inherent authority to control the conduct of cases on its docket, the Board finds that those motions should be briefed and decided together. Petitioner is allowed until the due date for the brief in response in Cancellation No.

Cancellation Nos. 92067609 and 92067670

92067670, i.e., April 16, 2018, to file a combined brief in response to both motions.¹

Respondent's reply brief is due in accordance with Trademark Rule 2.127(a).

Proceedings herein are otherwise suspended.

¹ If Petitioner elects to respond to the motions by filing amended petitions to cancel (*see* Fed. R. Civ. 15(a)(1)(B)), it should file each amended petition in the Board file for the proceeding to which the amended petition applies.