

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  
General Email: [TTABInfo@uspto.gov](mailto:TTABInfo@uspto.gov)

February 20, 2020

Opposition No. 92072535

*Maxwill LLC*

*v.*

*KBCO Distributors*

**Victoria von Vistauxx, Paralegal Specialist:**

On December 7, 2019, the Board issued a notice of default to Respondent for its failure to file an answer to the petition to cancel. 4 TTABVUE. On January 6, 2020, Respondent filed a motion to set aside the notice of default. 6 TTABVUE. The said motion is uncontested.<sup>1</sup>

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, a 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 the defendant has a meritorious defense. *See Fred Hyman Beverly Hills, Inc. v. Jacques Barnier, Inc.*, 21 USPQ2d 1556 (TTAB 1991). Moreover, because it is the policy of the

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<sup>1</sup> Respondent’s notice of appearance of counsel filed on January 6, 2020 is noted and entered. 5 TTABVUE.

Board to decide cases on their merits, the Board is 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. *See Paolo's Associates Limited Partnership v. Paolo Bodo*, 21 USPQ2d 1899 (Comm'r 1990).

In its response to the notice of default, Respondent's counsel states that Respondent was not aware of the notice of opposition or the notice of default issued by the Board in this proceeding. The counsel further states that on December 24, 2019 Registrant obtained "the mail, from the address 2541 S 1 H-35. STE 20-268, ROUND ROCK, TX 78664, and received the Petition for Cancellation and the Notice of Default." 6 TTANVUE 2.

In view of the foregoing, the Board finds that Respondent's failure to timely answer the notice of opposition was not willful or in bad faith, Petitioner will not be prejudiced by the Respondent's default, as the request to allow late filed answer is conceded. The Board further finds that by the submission of an answer that denies the essential allegations of Opposer's notice of opposition, Respondent has adequately shown that it has a meritorious defense to the petition to cancel. *See Fred Hayman Beverly Hills, Inc.*, 21 USPQ2d at 1557. Accordingly, the request to set aside the notice of default is **GRANTED** as conceded. The notice of default issued on December 7, 2019 is hereby discharged.

Respondent's answer to the petition to cancel filed concurrent with its response to the notice of default is accepted as its operative pleading in this proceeding. 7 TTABVUE.

The proceedings are resumed and trial dates are reset as follows:

Deadline for Discovery Conference	3/21/2020
Discovery Opens	3/21/2020
Initial Disclosures Due	4/20/2020
Expert Disclosures Due	8/18/2020
Discovery Closes	9/17/2020
Plaintiff's Pretrial Disclosures Due	11/1/2020
Plaintiff's 30-day Trial Period Ends	12/16/2020
Defendant's Pretrial Disclosures Due	12/31/2020
Defendant's 30-day Trial Period Ends	2/14/2021
Plaintiff's Rebuttal Disclosures Due	3/1/2021
Plaintiff's 15-day Rebuttal Period Ends	3/31/2021
Plaintiff's Opening Brief Due	5/30/2021
Defendant's Brief Due	6/29/2021
Plaintiff's Reply Brief Due	7/14/2021
Request for Oral Hearing (optional) Due	7/24/2021

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, matters in evidence, the manner and timing of taking testimony, 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).

### **TIPS FOR FILING EVIDENCE, TESTIMONY, OR LARGE DOCUMENTS**

The Board requires each submission to meet the following criteria before it will be considered: 1) pages must be legible and easily read on a computer screen; 2) page orientation should be determined by its ease of viewing relevant text or evidence, for example, there should be no sideways or upside-down pages; 3) pages must appear in their proper order; 4) depositions and exhibits must be clearly labeled and numbered – use separator pages between exhibits and clearly label each exhibit using sequential letters or numbers; and 5) the entire submission should be text-searchable. Additionally, submissions must be compliant with Trademark Rules 2.119 and 2.126. Submissions failing to meet all of the criteria above may require re-filing. **Note:** Parties are strongly encouraged to check the entire document before filing.<sup>2</sup> The Board will not extend or reset proceeding schedule dates or other deadlines to allow time to re-file documents. For more tips and helpful filing information, please visit the [ESTTA help](#) webpage.

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<sup>2</sup> To facilitate accuracy, ESTTA provides thumbnails to view each page before submitting.