

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

July 23, 2020

Cancellation No. 92074009

Growmark, Inc.

v.

Franklin Square Holdings, L.P.

Rebecca Stempien Coyle, Interlocutory Attorney:

No answer having been timely received, the Board issued a notice of default on June 11, 2020, allowing Respondent thirty days in which to show cause why judgment should not be entered against it. On June 25, 2020, Respondent concurrently filed a response to the notice of default and answer.

Respondent's response to the notice of default states that its failure to timely file an answer was due to Respondent never receiving the petition for cancellation due to the COVID-19 pandemic, namely the shutdown order issued by the Governor of the Commonwealth of Pennsylvania, where Respondent's office is located.

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).

Moreover, because it is the policy of the 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).

Here, the record does not show that Respondent's failure to timely answer was willful or in bad faith, or that Petitioner will suffer prejudice given that this proceeding is in its early stages, and the delay occasioned by Respondent's default was minimal. Based on these findings, Respondent has shown the requisite good cause. Accordingly, the notice of default is hereby **set aside**.

Respondent's answer filed on June 25, 2020 is now Respondent's operative pleading in this proceeding.

Schedule

Conferencing, disclosure, discovery and trial dates are reset as follows:

Deadline for Discovery Conference	8/24/2020
Discovery Opens	8/24/2020
Initial Disclosures Due	9/23/2020
Expert Disclosures Due	1/21/2021
Discovery Closes	2/20/2021
Plaintiff's Pretrial Disclosures Due	4/6/2021
Plaintiff's 30-day Trial Period Ends	5/21/2021
Defendant's Pretrial Disclosures Due	6/5/2021
Defendant's 30-day Trial Period Ends	7/20/2021
Plaintiff's Rebuttal Disclosures Due	8/4/2021
Plaintiff's 15-day Rebuttal Period Ends	9/3/2021
Plaintiff's Opening Brief Due	11/2/2021
Defendant's Brief Due	12/2/2021
Plaintiff's Reply Brief Due	12/17/2021
Request for Oral Hearing (optional) Due	12/27/2021

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, 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).

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:**

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Parties are strongly encouraged to check the entire document before filing.¹ 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.

¹ To facilitate accuracy, ESTTA provides thumbnails to view each page before submitting.