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October 8, 2021

Cancellation No. 92076712 (**Parent**)
Cancellation No. 92077232

Carousel Productions, Inc.

v.

Michael R. Stafford

By the Trademark Trial and Appeal Board:

These consolidated proceedings comes before the Board on Petitioner's motion, filed August 12, 2021, for default judgment in both proceedings. Respondent filed a response.[1]

The Board has considered the parties' briefs, but addresses the record only to the extent necessary to set forth the Board's analysis and findings, and does not repeat

[1] Respondent's response attaches a certificate of service that references an incorrect document and an incorrect service date. 11 TTABVUE 3. In view of Respondent's statement in his motion that opposing counsel "has been properly notified" of Respondent's filing, the Board assumes that despite the typographical errors in the certificate of service, the response was timely served on Petitioner. Going forward however, Respondent is expected to comply with the rules regarding proof of service. *See* TBMP § 113.03. Respondent was informed of these rules in the notice of institution. 2 TTABVUE 2.

Respondent is also reminded that all submissions to the Board must be double-spaced. Trademark Rule 2.126(a). *See also* TBMP § 502.02. Compliance with the rules governing Board proceedings is required of all parties, whether or not they are represented by counsel. *McDermott v. S.F. Women's Motorcycle Contingent*, 81 USPQ2d 1212, 1212 n.2 (TTAB 2006), *aff'd mem.*, 240 Fed. Appx. 865 (Fed. Cir. 2007).

or address all of the parties' arguments. *Guess? IP Holder LP v. Knowluxe LLC*, 116 USPQ2d 2018, 2019 (TTAB 2015).

I Motion to Extend Time

On June 2, 2021, the Board held a discovery conference with the parties wherein it consolidated Cancellation Nos. 92076712 and 92077232, allowed Petitioner until June 23, 2021 to file and serve amended complaints in both proceedings, and allowed Respondent until July 13, 2021 to file and serve answers to both amended complaints. 6 TTABVUE 3-4, 17.[2]

Petitioner timely filed amended complaints in both proceedings. Respondent, in lieu of an answer in either proceeding, filed on July 13, 2021, in the parent proceeding, a "Motion to Extend Time to Answer Carousel Productions Inc.'s Amended Petition for Cancellation." 9 TTABVUE.

The caption of Respondent's July 13, 2021 filing did not list both cancellation proceedings, as required by the Board. *See* 6 TTABVUE 3-4 (each submission in the consolidated proceedings "should be filed in the parent case only, but caption both consolidated proceeding numbers, listing and identifying the 'parent case' first"). Nor did Respondent explicitly state that he was seeking more time to file his answers in both proceedings. Nonetheless, in view of the fact that Respondent's answer in **each** proceeding was due on the date the motion was filed, and Respondent properly filed

[2] Citations are to the record in Can. No. 92076712.

his motion in the parent proceeding, the Board construes Respondent's motion as seeking an extension of the deadline to file his answers in **both** proceedings.[3]

In support of his motion, Respondent states that he requires additional time to obtain an attorney to assist him in these proceedings. 9 TTABVUE 2. Inasmuch as Petitioner filed no timely response to Respondent's motion, the motion is **granted as conceded**.[4] *See* Trademark Rule 2.127(a).

II. Motion for Default Judgment

Pursuant to the extension granted above, Respondent's answer in each proceeding was due on August 12, 2021. On that day, Petitioner filed a motion seeking default judgment in both proceedings. 10 TTABVUE.

In view of the Board's decision extending Respondent's deadline to file his answers to August 12, 2021, Petitioner's motion for default judgment was premature. Nonetheless, inasmuch as Respondent did not file his answers or a request for further extension that day, Respondent was in default as of the next day. Accordingly, the Board exercises its discretion to consider Petitioner's motion.

Default may be set aside "for good cause shown." Fed. R. Civ. P. 55(c). *See also* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE ("TBMP") § 312.01

[3] Respondent is reminded to caption all future motions and submissions, other than his answer in each proceeding, with the cancellation numbers of both consolidated proceedings.

[4] In its motion for default judgment filed on August 12, 2021, Petitioner states that it "objects" to Respondent's request for an extension. *See* 10 TTABVUE 4. To the extent Petitioner intended its motion for default judgment to constitute a response to Respondent's July 13, 2021 motion, the response was not timely inasmuch as it was filed more than twenty days after Respondent's motion. *See* Trademark Rule 2.127(a).
Even if the Board considered Petitioner's response however, Respondent's motion would nonetheless be granted for good cause, for the reasons set forth in this order.

(2021). Good cause is established when it is shown that: (1) the late filing was not the result of willful conduct or gross neglect; (2) acceptance of the late answer would not prejudice the plaintiff; and (3) the defendant has a meritorious defense to the action. *Fred Hayman Beverly Hills Inc. v. Jacques Bernier Inc.*, 21 USPQ2d 1556, 1557 (TTAB 1991). The determination of whether default judgment should be entered against a party lies within the sound discretion of the Board. *See, e.g., Identicon Corp. v. Williams*, 195 USPQ 447, 449 (Comm'r 1977). Because the Board is mindful of the law's preference for deciding cases on their merits, it is generally reluctant to enter a default judgment for failure to file a timely answer, and tends to resolve doubt on the matter in favor of the defendant. *Paolo's Assocs. L.P. v. Bodo*, 21 USPQ2d 1899, 1902 (Comm'r 1990); *see also Delorme Publ'g Co., Inc. v. Eartha's, Inc.*, 60 USPQ2d 1222, 1223 (TTAB 2000).

In response to Petitioner's motion, Respondent states that he is attempting to hire counsel to represent him in these proceedings, but that circumstances related to the COVID-19 pandemic have made it challenging to retain a qualified attorney. *Id.* at 2. Respondent requests an additional 90 days to retain an attorney and file his answers to the amended complaints. *Id.*

The Board finds that Respondent's failure to act in this case was not willful or the result of gross neglect, inasmuch as it was occasioned by Respondent's inability to secure counsel. The Board accepts Respondent's representations that the COVID-19 pandemic hindered his ability to retain qualified counsel, and notes that Respondent filed his request for additional time only a day after his answers were due.

As to the question of prejudice, Petitioner has not argued that it has been prejudiced, and has not pointed to loss of witnesses or evidence or other circumstances constituting prejudice. *See S. Indus. Inc. v. Lamb-Weston Inc.*, 45 USPQ2d 1293, 1296 (TTAB 1997). Mere delay is not a sufficient basis for establishing prejudice. *See Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154, 1156 (TTAB 1991).

Finally, Respondent has not filed an answer to the amended petition to cancel in either proceeding, and accordingly the Board is unable to determine if he has a meritorious defense. However, Respondent has cross-moved for additional time to secure an attorney and file his answers, and, as explained above, the Board finds good cause for Respondent's request.[5]

In view of the Board's findings above, Petitioner's motion for default judgment is **denied without prejudice**. Respondent's cross-motion for an extension of time is **granted**, to the extent that Respondent is allowed until **November 12, 2021** to file and serve his answer, or otherwise respond, to the amended petition to cancel in each consolidated proceeding.

Respondent is advised that due to the length of time that has already been afforded for him to secure counsel, **any further unconsented requests for additional time to answer must be supported by a detailed affidavit** stating Respondent's efforts taken to date to secure counsel, and the steps that Respondent intends to take if he is allowed additional time.

[5] The Board notes that Petitioner did not respond to Respondent's request for an extension of time.

III. Dates Reset

Dates in these consolidated proceedings are reset as follows:

Time to Answer	**11/12/2021**
Deadline for Discovery Conference	**12/12/2021**
Discovery Opens	**12/12/2021**
Initial Disclosures Due	**1/11/2022**
Expert Disclosures Due	**5/11/2022**
Discovery Closes	**6/10/2022**
Plaintiff's Pretrial Disclosures Due	**7/25/2022**
Plaintiff's 30-day Trial Period Ends	**9/8/2022**
Defendant's Pretrial Disclosures Due	**9/23/2022**
Defendant's 30-day Trial Period Ends	**11/7/2022**
Plaintiff's Rebuttal Disclosures Due	**11/22/2022**
Plaintiff's 15-day Rebuttal Period Ends	**12/22/2022**
Plaintiff's Opening Brief Due	**2/20/2023**
Defendant's Brief Due	**3/22/2023**
Plaintiff's Reply Brief Due	**4/6/2023**
Request for Oral Hearing (optional) Due	**4/16/2023**

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:** Parties are strongly encouraged to check the entire document before filing.[6] 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.

[6] To facilitate accuracy, ESTTA provides thumbnails to view each page before submitting.