

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

ky/tab

September 25, 2023

Cancellation No. 92081877

*Bob Woodruff Family Foundation dba Bob
Woodruff Foundation*

v.

Michelle Reilly

Tashia A. Bunch, Interlocutory Attorney:

On May 11, 2023, the Board allowed Respondent time to show cause why default judgment should not be entered against it for failing to timely answer the petition for cancellation. 4 TTABVUE. On May 24, 2023, a submission was filed on behalf of Respondent in response to the notice of default. 5 TTABVUE.

The May 24, 2023 submission does not comply with multiple Board rules, as explained below. In view thereof, the submission will be given no consideration. However, it appears that Respondent intends to file a response to the notice of default. Furthermore, 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. *Paolo's Assocs. Ltd. P'ship v. Paolo Bodo*, 21 USPQ2d 1899, 1903-04 (Comm'r 1990).

Accordingly, Respondent is allowed until **October 9, 2023** to show cause why judgment by default should not be entered against Respondent in accordance with Fed. R. Civ. P. 55(b)(2).

I. Failure to Include Proof of Service

Respondent failed to include a certificate of service proof of service of its filing on Petitioner. All submissions filed in Board inter partes proceedings **must be served** upon the other party or parties, and **accompanied by a statement** signed by the attorney or other authorized representative, attached to or appearing on the original submission when filed, clearly stating the date and manner in which service was made.¹ *See* Trademark Rule 2.119(a); TBMP § 113.03. Service must be made by email, unless otherwise stipulated or as otherwise set forth in Trademark Rule 2.119(b).

II. Improper Format

All submissions filed in Board inter partes proceedings must be filed in at least 11-point type and double-spaced. *See* Trademark Rule 2.126(a)(1); TBMP § 502.02. Respondent's submission does not comply with this rule because it is not double-spaced.

III. Improper Signature

The submission is signed by Patrick Hardiman, but Patrick Hardiman is not listed as correspondent for Respondent, who is an individual. If Respondent is not represented by an attorney, the Board will only correspond with Respondent, who is

¹ An example of an acceptable certificate of service can be found below in the section titled "Information for Pro Se Parties."

a party to the proceeding. *See* Trademark Rule § 2.18(a)(1). Future submissions must be signed by Respondent, or Respondent's attorney if one is appointed.

IV. Showing of Good Cause

In response to a notice of default, a party must file a satisfactory showing of good cause why default judgment should not be entered against it. *See* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 312.02 (2023). 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. *Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556 (TTAB 1991). The showing of a meritorious defense does not require an evaluation of the merits of the case. All that is required is a plausible response to the allegations in the complaint. *See* TBMP 312.02.

V. Information for Pro Se Parties

While Patent and Trademark Rule 11.14 permits any person to represent itself, it is strongly advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in inter partes proceedings before the Board to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney. *See* TBMP § 114.02.

Proof of Service

All submissions filed in this proceeding must be accompanied by a statement, signed by the attorney or other authorized representative, attached to or appearing on the original submission when filed, clearly stating the date and manner in which

service was made, the name of each party or person upon whom service was made, and the email address or address. *See* TBMP § 113.03. Service must be made by email unless otherwise stipulated, or unless the filing party has satisfied the requirements for another method of service as set forth in Trademark Rule 2.119(b). The statement will be accepted as prima facie proof of service, must be signed and dated, and should take the form of a Certificate of Service as follows:

I hereby certify that a true and complete copy of the foregoing (insert title of submission) has been served on (insert name of opposing counsel or party) by forwarding said copy on (insert date of mailing), via email (or insert other appropriate method of delivery) to: (set out name, address, and email address of opposing counsel or party).

Signature _____

Date _____

Submissions in Board proceedings must be made via ESTTA, the Electronic System for Trademark Trials and Appeals, and must be in compliance with Trademark Rules 2.126(a) and (b). *See* TBMP § 110.01. The ESTTA user manual, ESTTA forms, and instructions for their use are at <http://estta.uspto.gov/>.

Relevant Resources

It is recommended that any pro se party be familiar with the latest edition of Chapter 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice. Parties should also be familiar with the Trademark Trial and Appeal Board Manual of Procedure (TBMP), available at <http://www.uspto.gov/trademarks-application-process/trademark-trial-and-appeal-board-ttab>, the TTABVUE system for viewing the record for all Board proceedings, available at <http://ttabvue.uspto.gov/ttabvue/>, and the Standard Protective Order, available at

Cancellation No. 92081877

<https://www.uspto.gov/trademarks-application-process/appealing-trademark-decisions/standard-documents-and-guidelines-0>.

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is required of all parties, whether or not they are represented by counsel. *McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, n.2 (TTAB 2006), *aff'd unpub'd*, 240 Fed. Appx.865 (Fed. Cir. 2007), *cert. denied*, 552 U.S. 1109 (2008).

Proceedings remain **suspended** pending response to this order.