

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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ajl/ey

February 8, 2024

Opposition No. 91287643

Hugo Boss AG

v.

Jamie Elmore

Ashlyn Lembree, Interlocutory Attorney:

An answer was due in this proceeding on November 22, 2023. 2 TTABVUE 3. On December 3, 2023, the Board issued a notice of default under Fed. R. Civ. P. 55(a), for failure to file an answer or other response. 4 TTABVUE. On January 2, 2024, counsel for Applicant filed a notice of appearance along with a timely filed a response to the order to show cause.¹ 5 TTABVUE and 6 TTABVUE. Applicant filed a proposed answer with Applicant's response to the notice of default. 6 TTABVUE 23-26.

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). In exercising its discretion, the Board is mindful of the law's strong preference for deciding cases on their merits. *See Paolo's Assocs. L.P. v. Bodo*, 21 USPQ2d 1899, 1902 (Comm'r 1990); *see also DeLorme Publ'g Co., Inc.*

¹ The Board's record has been updated to reflect the correspondence information provided for Applicant's counsel.

v. Eartha's, Inc., 60 USPQ2d 1222, 1223 (TTAB 2000); *Thrifty Corp. v. Bomax Enters.*, 228 USPQ 62, 63 (TTAB 1985). Accordingly, the Board generally is 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*, 21 USPQ2d at 1902. *See also* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 312.02 (2023).

The Board will set aside entry of default if a defendant who has failed to file a timely answer to the complaint files a satisfactory showing of good cause why default judgment should not be entered against it. *See* Fed. R. Civ. P. 55(c); *see also* TBMP § 312.02. Good cause for discharging default is generally found if (1) the delay in filing is not the result of willful conduct or gross neglect, (2) the delay will not result in substantial prejudice to the opposing party, and (3) the defendant has a meritorious defense. *See DrDisabilityQuotes.com, LLC v. Krugh*, 2021 USPQ2d 262, at *2 (TTAB 2021) (setting aside notice of default; one-day delay in filing motion to dismiss); *Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556, 1557 (TTAB 1991) (nine-day delay).

In the response, Applicant states that Applicant was “unable to secure legal representation in this matter until December 21, 2023, after the deadline to answer the opposition lapsed and in the midst of the holiday season.” 6 TTABVUE 4.

Here, the record does not show that Applicant’s failure to timely answer the notice of opposition was willful or in bad faith, or that Opposer will suffer prejudice given that this proceeding is in its early stages, and the delay occasioned by Applicant’s

default has been minimal. Applicant adhered to the preferred practice of filing a late answer concurrently with its response. The answer is compliant with Fed. R. Civ. P. 8(b) and indicates that Applicant seeks to set forth a plausible response to the allegations and to pursue a meritorious defense for consideration on the merits at trial.² See TBMP § 311.02. Based on these findings, Applicant has shown the requisite good cause to set aside default for failure to file a timely answer. Accordingly, the notice of default is hereby **set aside**, and judgment will not be entered against Applicant on the basis of default.

Notwithstanding the ruling to set aside default, Applicant and its counsel are advised to adhere to all deadlines, including discovery and trial deadlines, and are expected to remain abreast of this proceeding through utilizing TTABVUE. See TBMP § 110.01.

Applicant's late answer is acknowledged, and is accepted as Applicant's operative pleading in this proceeding.

Accordingly, conference, disclosure, discovery and trial dates, are reset as follows:

Deadline for Discovery Conference	3/15/2024
Discovery Opens	3/15/2024
Initial Disclosures Due	4/14/2024
Expert Disclosures Due	8/12/2024
Discovery Closes	9/11/2024
Plaintiff's Pretrial Disclosures Due	10/26/2024
Plaintiff's 30-day Trial Period Ends	12/10/2024
Defendant's Pretrial Disclosures Due	12/25/2024
Defendant's 30-day Trial Period Ends	2/8/2025
Plaintiff's Rebuttal Disclosures Due	2/23/2025
Plaintiff's 15-day Rebuttal Period Ends	3/25/2025

² 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 *DeLorme Pub'g*, 60 USPQ2d at 1224.

Plaintiff's Opening Brief Due	5/24/2025
Defendant's Brief Due	6/23/2025
Plaintiff's Reply Brief Due	7/8/2025
Request for Oral Hearing (optional) Due	7/18/2025

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.

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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.³ 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.

³ To facilitate accuracy, ESTTA provides thumbnails to view each page before submitting.