

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

BUO

Mailed: September 29, 2015

Cancellation No. 92061215

Schiedmayer Celesta GMBH

v.

Piano Factory Group

Benjamin U. Okeke, Interlocutory Attorney:

The Board's order instituting this proceeding, issued April 7, 2015, set May 17, 2015, as the deadline for Piano Factory Group ("Respondent") to file its answer to the petition to cancel its Registration No. 3340759, filed by Schiedmayer Celesta GMBH ("Petitioner"). On May 29, 2015, Respondent filed its answer to the petition to cancel. However, the answer having not been filed by the deadline, Petitioner filed, on June 8, 2015, a motion for default judgment in light of Respondent's failure to timely file its answer.

Respondent subsequently filed, on June 16, 2015, its response to Petitioner's motion, requesting that the Board set aside its default and accept its late filed answer. The motion has been fully briefed.^{1,2}

¹ Petitioner's reply brief, filed June 23, 2015, is noted. However, the parties' respective submissions filed subsequent to the reply brief have been given no consideration because after the movant's reply

Motion to Set Aside Default Judgment

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, 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).

In this case, the Board finds that Petitioner is not prejudiced by Respondent’s approximate two-week late filing, and has not alleged any cognizable prejudice in its motion. Mere delay does not constitute the type of prejudice envisioned by this rule, and Petitioner can hardly complain that it would have to now proceed with the cancellation—which Petitioner would have had to do, and should have been prepared to do nonetheless, had Respondent timely filed its answer.

Additionally, by filing an answer which denies the fundamental allegations in the petition to cancel, Respondent has asserted a meritorious defense to the petition to cancel. It is not incumbent on Respondent to prove its defenses at this stage of the proceeding. Moreover, while the Board is concerned about the reasons proffered for Respondent’s tardiness – inability to secure counsel for over 50 days from the time it was served with the petition to cancel, there is nothing in the record which

brief has been filed “[t]he Board will consider no further papers in support of or in opposition to a motion.” *See* Trademark Rule 2.127(a); TBMP § 502.02(b) (2015).

² Respondent’s change of correspondence address and appearance of counsel, filed July 14, 2015, is also noted. The Board’s records have been updated accordingly.

indicates that the reasons for Respondent's delay were willful or in bad faith. Finally, and as Petitioner concedes, the Board "prefer[s] that controversies be settled on the merits." 5 TTABVUE 4.

In view of the foregoing, Petitioner's motion for default judgment is **DENIED**.

Accordingly, inasmuch as the record indicates that Respondent seeks to set forth a meritorious defense to the allegations, that any prejudice to Petitioner is minimal, and that Respondent has not acted in bad faith, or for the purpose of delay, Respondent's default is set aside. Respondent's answer to the petition to cancel, filed May 29, 2015, is accepted as Respondent's operative pleading in this proceeding.

Schedule

The remaining conferencing, disclosure, discovery, and trial dates are reset as follows:

Deadline for Discovery Conference	10/28/2015
Discovery Opens	10/28/2015
Initial Disclosures Due	11/27/2015
Expert Disclosures Due	3/26/2016
Discovery Closes	4/25/2016
Plaintiff's Pretrial Disclosures	6/9/2016
Plaintiff's 30-day Trial Period Ends	7/24/2016
Defendant's Pretrial Disclosures	8/8/2016
Defendant's 30-day Trial Period Ends	9/22/2016
Plaintiff's Rebuttal Disclosures	10/7/2016
Plaintiff's 15-day Rebuttal Period Ends	11/6/2016

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of taking of testimony. Trademark Rule 2.125.

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Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.