

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

MAILED: May 2, 2002

Opposition No. 115,931

Central Mfg. Inc.

v.

Third Millennium Technology, Inc.

**Before Cissel, Quinn, and Rogers, Administrative Trademark
Judges.**

By the Board.

On December 7, 2001, the Board granted applicant's motion to dismiss as conceded, entered sanctions against Leo Stoller for his conduct in this proceeding, and dismissed the opposition with prejudice. This case now comes up for consideration of a request for reconsideration of that decision, filed by "Leo Stoller dba Central Mfg."¹ on December 18, 2001.

In the present motion for reconsideration, Mr. Stoller contends that it was error to treat the motion to dismiss as conceded. He asserts that opposer did not reply to the motion to dismiss because the parties had settled the case and a request to withdraw the opposition was filed.² Mr. Stoller further argues that the parties' settlement agreement serves as proof that

¹ The request for reconsideration was filed by "Leo Stoller dba Central Mfg."; however, Mr. Stoller, as an individual, with or without a "dba," is not a party to this proceeding. Central Mfg. Inc. is the plaintiff of record herein. Mr. Stoller has been informed on many occasions, in many Board proceedings, that there is a distinction between himself as an individual and any corporation, such as Central Mfg. Inc., with which he is involved. The lesson should have been learned long ago.

² The request to withdraw the opposition bears a filing date of May 16, 2000.

opposer and/or Mr. Stoller did not make any misrepresentations to this Board and that it was error to consider the question of sanctions once the case was settled. As evidence in support of his request for reconsideration, Mr. Stoller attaches signed copies of the request to withdraw and the parties' settlement agreement.

The general premise underlying a motion for reconsideration under Trademark Rule 2.127(b) is that, based on the facts before the Board and the prevailing authorities, the Board erred in reaching its initial decision. Such a motion may not properly be used to introduce additional evidence, nor should it simply reargue the points presented in the original motion. Rather, the motion normally should be limited to a demonstration that, based on the facts before it and the applicable law, the Board's ruling was in error and requires appropriate change. See TBMP §518; cf. TBMP §544.

We find no error in our decision to treat the motion to dismiss as conceded under Trademark Rule 2.127(a). Applicant's motion to dismiss was not rendered moot by the parties' settlement or by the May 16, 2000 withdrawal paper. Upon settlement, applicant could have expressly withdrawn its motion to dismiss to preclude the Board's consideration thereof; however, applicant did not. Additionally, at the time of the Board's December 7, 2001 decision, we did not have before us a signed copy of the parties' settlement agreement, nor did the record include an effective withdrawal of the opposition by the

proper party in interest herein, namely, opposer Central Mfg. Inc.³

We reject Mr. Stoller's position that it was error for the Board to consider the question of sanctions. The motion for reconsideration presents no citation of authority for the proposition that the Board cannot, in a dispositive order, utilize its inherent authority to sanction an individual found to have engaged in a pattern of misrepresentation. Moreover, since there was no effective withdrawal, the argument that the withdrawal should have barred consideration of the question of sanctions also fails.

On reconsideration, we decline to consider Mr. Stoller's new evidence. Even if we did consider the new evidence, there is no information in the settlement agreement that would lead us to question the factual bases underlying the Board's December 7, 2001 ruling. The settlement agreement does not present facts that contradict applicant's underlying claim of misrepresentation, i.e., that the parties were not engaged in bona fide bi-lateral settlement negotiations at the time opposer filed its requests to extend to oppose. The settlement agreement bears signatures of the parties on March 31, 2000 and April 21, 2000, dates long after the relevant time period.

³ The withdrawal paper was signed by Mr. Stoller in his individual capacity, not as an officer of opposer Central Mfg. Inc. The withdrawal paper identifies the signor as "Leo Stoller dba Central Mfg. Co."

Based on the evidence of record at the time of the Board's December 7, 2001 decision and the prevailing authorities, we find no error which warrants reversal. Accordingly, the motion for reconsideration is **denied**.

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