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**United States Court of Appeals for the Federal Circuit**

04-1305

**SOLICITOR**

NOV - 3 2004

LEO STOLLER,

**U.S. PATENT & TRADEMARK OFFICE**  
Appellant,

v.

KAREN PONCE,

Appellee.

**JUDGMENT**

ON APPEAL from the

United States Patent and Trademark Office,  
Trademark Trial and Appeal Board

IN CASE NO(S):

Opposition No. 91/120,339

This CAUSE having been heard and considered, it is

ORDERED and ADJUDGED:

AFFIRMED

ENTERED BY ORDER OF THE COURT

OCT 8 2004

Date

*Jan Horbaly*

Jan Horbaly, Clerk

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UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT

By: *Christy Thomas* Date: 11/01/01

**ISSUED AS A MANDATE:** NOV - 1 2004

**SOLICITOR**

NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition  
is not citable as precedent. It is a public record.

NOV - 3 2004

U.S. PATENT & TRADEMARK OFFICE

**United States Court of Appeals for the Federal Circuit**

04-1305

LEO STOLLER,

Appellant,

v.

KAREN PONCE,

Appellee.

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DECIDED: October 8, 2004

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Before, MAYER, Chief Judge, RADER, and SCHALL, Circuit Judges

PER CURIAM.

Leo Stoller seeks review of the Trademark Trial and Appeal Board's (Board's) dismissal of his opposition to Karen Ponce's application for the trademark STEALTH SHELF. Stoller v. Ponce, Opp'n No. 91,120,339 (TTAB Jan. 22, 2004). In particular, Mr. Stoller appeals the Board's decision to deny admission of evidence of his standing. In addition, Mr. Stoller appeals the Board's finding that he was without standing as a violation of his due process rights under the Fifth and Fourteenth Amendments to the United States Constitution. Because the Board did not abuse its discretion in excluding Mr. Stoller's evidence and there is no procedural due process violation, this court affirms.

an officer of the court. Upon the exclusion of both the deposition transcripts and the attached affidavits, the Board found that Mr. Stoller had submitted no other evidence demonstrating that he had standing to oppose Ms. Ponce's trademark application. The Board, therefore, dismissed Mr. Stoller's opposition without reaching the issue of whether there was a likelihood of confusion between STEALTH SHELF and the marks registered by Mr. Stoller.

Mr. Stoller appeals the Board's dismissal to this court.

#### ANALYSIS

The Board's evidentiary findings will stand absent an abuse of discretion. See Chen v. Bouchard, 347 F.3d 1299, 1307 (Fed. Cir. 2003) (citing Kearns v. Chrysler Corp., 32 F.3d 1541, 1547 (Fed. Cir. 1994)). Further, this court reviews the Board's conclusions of law without deference. In re Int'l Flavors & Fragrances Inc., 183 F.3d 1361, 1365 (Fed. Cir. 1999).

Mr. Stoller argues that the Board erred in holding his affidavits inadmissible for failure to comply with the requirements of Trademark Rule 2.123(b). 37 C.F.R. § 2.123(b) (2003). This rule allows for the submission of witness testimony in the form of affidavits only "by written agreement of the parties." The Board found that Ms. Ponce had not agreed to either submission and Mr. Stoller cannot contest this finding. Accordingly, the Board did not abuse its discretion in excluding the affidavits from consideration.

Alternatively, Mr. Stoller contends that the affidavits are admissible as exhibits to the depositions. The Board, however, determined that Mr. Stoller merely sought to circumvent the rule prohibiting affidavit submission absent

Finally, Mr. Stoller argues that the Board's refusal to consider his evidence of standing and subsequent dismissal of his opposition is a denial of his due process rights. This procedural due process claim is belied, however, by the fact that he received a complete hearing of his opposition in accordance with the Rules of Practice in Trademark Cases. See In re Int'l Flavors, 183 F.3d at 1365. Moreover, Mr. Stoller had adequate notice of the Trademark Rules because not only are they available to the public, he admits that he has "engaged in the policing and protecting of [his] valuable trademarks before the [Board] for over 25 years." Appellant's Brief at 2. In addition, Mr. Stoller was given a full opportunity to argue the admissibility of his evidence in both his reply brief and at the hearing before the Board. See id.

Mr. Stoller also argues that he was not given a fair hearing because one of the administrative trademark judges on his opposition panel was prejudiced against him. Mr. Stoller, however, provides no evidence or rationale in support of his belief that one administrative judge was biased. In sum, Mr. Stoller's due process arguments are unavailing.

### CONCLUSION

Accordingly, the decision of the Board is affirmed.

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UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT

By: Christy Thomas Date: 11/1/09