

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

tdc/apb

Mailed: July 25, 2006

Opposition No. 91159234

Joseph Enterprises, Inc.

v.

NeoPets, Inc.

Andrew P. Baxley, Interlocutory Attorney:

On July 19, 2006, applicant/counterclaim plaintiff NeoPets, Inc. ("NeoPets"), filed an abandonment without prejudice of its involved application Serial No. 76/389091.

Trademark Rule 2.135 provides that if, in an inter partes proceeding, an applicant files an abandonment without the written consent of every adverse party to the proceeding, judgment shall be entered against that applicant.

In view thereof, and because opposer/counterclaim defendant Joseph Enterprises, Inc.'s ("Joseph") written consent to the abandonment is not of record, judgment is hereby entered against NeoPets, the opposition is sustained, and registration to NeoPets is refused.

On March 12, 2004, NeoPets filed its answer to the opposition and a counterclaim to cancel Joseph's pleaded Registration Nos. 2090156, 2306061, and 2773363. NeoPets filed the proper fee. On April 12, 2004, Joseph filed an answer to the counterclaim. The counterclaim remains pending.

Accordingly, proceedings will go forward on the counterclaim only. Discovery is open. The close of discovery and testimony periods are reset as follows.

DISCOVERY PERIOD TO CLOSE:	1/19/07
NeoPets's 30-day testimony period as plaintiff to close:	4/19/07
Joseph's 30-day testimony period as defendant to close:	6/18/07
NeoPets's 15-day rebuttal testimony period as plaintiff to close:	8/2/07

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 the taking of testimony. Trademark Rule 2.125.

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. by Trademark Rule 2.129.