

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Hearing:  
February 5, 2015

Mailed:  
April 28, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*Publix Asset Management Company*  
*v.*  
*Allegiance Retail Services, LLC*<sup>1</sup>

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Opposition Nos. 91186148 and 91186863

James B. Lake of Thomas & Locicero PL for the Publix Asset Management Company.

Peter A. Luccarelli Jr. of Luccarelli & Musacchio LLP for Allegiance Retail Services, LLC.

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Before Quinn, Shaw, and Goodman, Administrative Trademark Judges.

Opinion by Shaw, Administrative Trademark Judge:

On August 7, 2015, the Board issued its final, non-precedential decision dismissing the consolidated opposition against The Great Atlantic & Pacific Tea Company, Inc. (A&P), the original Applicant on the underlying applications for registration. On September 2, 2015, based on Applicant's July 19, 2015 filing of a

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<sup>1</sup> Substituted for The Great Atlantic & Pacific Tea Company, Inc. as the assignee of the mark and applications. Approved by order the Board on April 13, 2016. 139 TTABVUE 2.

bankruptcy petition in the United States Bankruptcy Court for the Southern District of New York, Opposer filed a motion to stay proceedings. The Board granted the motion and suspended proceedings, including Opposer's time to seek reconsideration of the Board's order, on September 3, 2015. *See* Trademark Rule 2.129(c), 37 C.F.R. § 2.129(c). During the bankruptcy proceeding, A&P assigned the marks and applications to Allegiance.<sup>2</sup> Because Allegiance is not a party to the bankruptcy proceeding, proceedings in this case have been resumed and Allegiance has been substituted for A&P.<sup>3</sup> Publix now files an unopposed motion to vacate the Board's decision and a joint motion to dismiss proceedings as moot.

Following the assignment of the mark and applications from A&P, Allegiance entered into a coexistence agreement with Publix imposing geographic restrictions on the use of the mark.<sup>4</sup> The coexistence agreement resolves the parties' dispute and includes their undertakings with respect to use and registration of their respective marks. In particular, Allegiance agrees to "amend the applications (or file replacement applications, if appropriate) to reflect the geographic limitations set forth in [the] agreement."<sup>5</sup>

The bankruptcy suspension also stayed Publix's right to seek rehearing or to appeal from the Board's decision. Rather than filing a request for reconsideration or an appeal, Publix, with Allegiance's consent, now seeks to vacate the Board's decision

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<sup>2</sup> 138 TTABVUE 4.

<sup>3</sup> 139 TTABVUE.

<sup>4</sup> 140 TTABVUE 8.

<sup>5</sup> *Id.* at 9.

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and dismiss proceedings as moot, thereby allowing Allegiance to amend the marks to reflect the geographic limitations or to file replacement applications. It is apparent that vacatur of the Board's August 7, 2015 decision and dismissal of the proceedings are important conditions of the agreement.

Motions to set aside or vacate a final judgment rendered by the Board are governed by Fed. R. Civ. P. 60(b) and are committed to the equitable discretion of the Board. *Trademark Trial and Appeal Board Manual of Procedure (TBMP)*, § 544. (2015). Section 544 states:

Where the parties are agreed that the circumstances warrant the vacating or setting aside of a final judgment, a stipulation or consented motion for relief from the judgment should be filed. The Board ordinarily will grant a consented request for relief from judgment.

Inasmuch as there are no circumstances that would suggest that relief from judgment would not be appropriate in this case and the result is consistent with the decision of August 7, 2015, the motion to vacate is granted. The Board's decision dated August 7, 2015 is vacated, and the consolidated opposition is dismissed as moot. Serial Nos. 77349246 and 77409725 will be forwarded for issuance of the notices of allowance.