

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
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Mailed: September 15, 2014

Opposition No. 91209747

Rita M. Clark d/b/a Bluewater Rentals

v.

Bluewater Key RV Ownership Park
Property Owners Association, Inc.

By the Trademark Trial and Appeal Board:

The withdrawal of opposition and the voluntary surrender of Registration No. 4274836, both dated July 1, 2014 are noted.

The voluntary surrender of Registration No. 4274836 under Section 7(e) of the Trademark Act, which was the subject of the counterclaim in this proceeding, was filed without the written consent of applicant/counterclaim plaintiff. Trademark Rule 2.134(a) provides that if the respondent in a cancellation proceeding applies for cancellation of the involved registration under Section 7(e) of the Trademark Act without the written consent of every adverse party to the proceeding, judgment shall be entered against respondent.

In view thereof, and because applicant/counterclaim plaintiff's written consent to the voluntary surrender is not of record, judgment is entered against opposer/counterclaim defendant, **the counterclaim is granted**, and

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Registration No. 4274836 will be cancelled in due course by the Commissioner for Trademarks under Section 18.¹

Opposer/counterclaim defendant, without the written consent of applicant, filed a withdrawal of the opposition on July 1, 2014.

Trademark Rule 2.106(c) provides that after an answer is filed, the opposition may not be withdrawn without prejudice except with the written consent of applicant.

In view thereof, and because the withdrawal was filed after answer, the **opposition is dismissed with prejudice.**²

¹ It is noted that Registration No. 4274836 was cancelled under Section 7 by the Post Registration Division of the office on July 21, 2014. Inasmuch as the registration was involved in a counterclaim cancellation proceeding here in the Board, the voluntary surrender should have been filed with the Board for action. The cancellation of the registration under Section 7 will be amended to Section 18 as appropriate.

² Applicant/counterclaim plaintiff's July 3, 2014 filing is now moot in view of the above.