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

Mailed: May 29, 2002

Cancellation No. 24,336
Cancellation No. 28,449

Del-Rain Corporation

v.

Pelko Electric Inc. and
Pelonis USA, Ltd.

Cindy B. Greenbaum, Attorney:

Del-Rain Corporation and Pelko USA, Ltd. were the name parties in a civil action in the United States District Court for the Western District of New York, Civil Action No. 94-CV-58, for the past few years. Consequently, the Board issued several suspension orders herein pending the final resolution of the referenced civil action. The Board issued the most recent suspension order on June 8, 2001, in light of Del-Rain Corporation's appeal to the United States Court of Appeals for the Second Circuit of the District Court's decision in favor of Pelko USA, Ltd., as counterclaimant.

On March 21, 2002, respondents filed a motion to resume in view of the decision of the United States Court of Appeals for the Second Circuit. The Second Circuit decision affirmed the lower court's order on Pelko USA, Ltd.'s counterclaims of federal and common law unfair competition

and breach of contract. The Second Circuit also affirmed the lower court's findings in favor of respondent Pelonis USA, Ltd. on the issues of abandonment, priority and likelihood of confusion, and bad faith adoption of the PELONIS mark, *inter alia.*[1]

Respondents included with the motion a copy of the district court's decision and the final appellate decision. Respondents did not indicate whether petitioner has filed a petition for rehearing in the Second Circuit, or a petition for certiorari to the United States Supreme Court. However, inasmuch as petitioner did not respond to respondents' motion to resume proceedings herein, the motion to resume is granted as conceded.[2] See Trademark Rule 2.127(a).

In view of the above, petitioner is allowed until TWENTY DAYS from the mailing date of this order in which to show cause why the cancellation proceedings should not be dismissed.

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[1] The petitions for cancellation allege that respondent Pelko Electric, Inc. committed fraud in obtaining the involved registrations, and subsequently abandoned the use of its registered marks. The petitions also are based on claims of priority and likelihood of confusion under Trademark Act Section 2(d).

[2] The Board notes that the time for petitioner to file a petition for rehearing or for certiorari has elapsed, and that petitioner did not inform the Board that petitioner had filed either petition, although petitioner had the opportunity to do so in response to respondent's motion for resumption. Accordingly, the Board presumes that petitioner did not file any petition, and that the decision of the Second Circuit in the civil action between the parties is final.