



THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

I.O.B. REALTY, INC., )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 PATSY'S BRAND, INC., )  
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 Registrant. )  
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 PATSY'S BRAND, INC., )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 I.O.B. REALTY, INC., )  
 )  
 Registrant. )  
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74400856

Cancellation No. 92/028,142

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Cancellation No. 92/029,614

**I.O.B. REALTY'S REQUEST FOR RECONSIDERATION**

Counsel for I.O.B. Realty, Inc. ("I.O.B. Realty"), appreciates the effort and work expended by the panel in preparing the decision of June 28, 2007, for this matter. This Request for Reconsideration is filed to confirm that no final, appealable orders for these cancellation proceedings were issued by the Board. The Board's decision suspended both proceedings and no certification for interlocutory appeal is granted. Further, this request for reconsideration is accompanied by a Section 8 Declaration which I.O.B. Realty asks the Trademark Office to accept for the reasons discussed below.

This request is filed without extensive briefing in order to minimize the time necessary for the Board's review.



REQUEST FOR RECONSIDERATION

Cancellation No. 92/028,142

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**1. Lack of Final Decision**

The request of I.O.B. Realty's January 23, 2007, Motion for Final Orders in Cancellation Proceedings was for the Board to issue final orders to permit an appeal to District Court. The U.S. District Court for the Eastern District of New York is currently reviewing a motion to correct the Register based upon the actions and inactions occurring in these cancellation proceedings.

The Board suspended these two proceedings. In other words, the Board is retaining jurisdiction over these proceedings, and the decision of June 28, 2007, is not a final order suitable for appeal to the District Court. However, I.O.B. Realty notes that on July 13, 2007, the Commissioner for Trademarks vacated the May 27, 2003, order in this proceeding and cancelled Registration Numbers 1,975,110 and 2,213,574 for failure to file affidavits of continued use. Also on July 13, 2007, the status of this proceeding was changed to "TERMINATED."

I.O.B. Realty spoke with Mr. Marmelstein of the Board on July 17, 2007, regarding whether the Board's decision of June 28, 2007, was appealable. I.O.B. Realty was informed that this decision was not final and the suspended proceedings were not appealable.

Based on this understanding, and since the Board explicitly stated in its decision of June 28, 2007, that these proceedings were to be suspended pending resolution of the Parties' civil action, I.O.B. Realty understands that the actions of July 13, 2007, did not cause the Board's order of June 28, 2007, to be final and appealable and that these proceedings remain suspended and unappealable.

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If I.O.B. Realty's understanding of the July 13, 2007, actions is incorrect, I.O.B. Realty requests reconsideration of the termination of these proceedings and requests final orders for appeal or an order granting interlocutory appeal of these proceedings.

**2. Concurrent Submission of Section 8 Declaration for U.S. Registration Number 2,213,574**

Concurrent with this request for reconsideration I.O.B. Realty is submitting a Section 8 Declaration for Registration No. 2,213,574. The PATSY'S PIZZERIA mark has been in use in commerce since at least 1933. Some of this use occurred through predecessor companies but the use inured to the benefit of the current registrant. I.O.B. Realty has owned and used the mark since the date of the registration. The use of the mark occurred throughout the first six years of the registration and continued from the date of the registration to the present.

The Board, during the cancellation, proceeding cancelled the registration under Section 18 and thereby rendered it impossible to have a Section 8 Declaration of use accepted by the Trademark Office. This situation is acknowledged and explained in the Board's decision of June 28, 2007.

The unique situation facing I.O.B. Realty is further effected by the Board's decision of June 28, 2007, wherein the basis for cancellation of I.O.B. Realty's registration was changed *sua sponte* from Section 18 to Section 8. The Board changed the basis for cancellation even though it states that I.O.B. Realty's Section 8 filings would not have been approved.

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Section 8 (15 U.S.C. § 1058(c)(2)) allows for the possibility that a deficient Section 8 Declaration can be corrected after the statutory time period and within the time prescribed after notification of the deficiency. While this section of the statute is not exactly on point with the current matter before the Board, this section allows for correction of such a submission after expiration of the grace period for filing a Section 8 Declaration.

The Board erred in its original cancellation of the registration under Section 18 and thereby created a situation wherein a Section 8 Declaration would not be accepted. Notification that the Section 18 cancellation of the registration was withdrawn was not received by I.O.B. Realty until June 28, 2007. Removal of this basis for cancellation was the first instance where correction of the deficiency could occur. Therefore, I.O.B. Realty concurrently submits the Section 8 Declaration, a specimen, and the official fee, including the fee for the surcharge. If any additional official fees are due, they may be charged to Deposit Account No. 12-1210.

**3. Motion to Correct the Register**

A motion to correct the Register is pending before Judge Irizarry in the U.S. District Court for the Eastern District of New York. Judge Irizarry specifically requested briefing on this topic.

No law has been cited by either Party as to whether a district judge is permitted to correct the register under 15 U.S.C. § 1119 by restoring one of I.O.B. Realty's cancelled registrations now that the period for filing a Section 8 Declaration under 15 U.S.C. § 1058 has passed. Extensive electronic legal research has been performed on this topic, and no case on point has

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been discovered. The Board was not requested to address this point of law, and the Board's decision of June 28, 2007, does not provide any legal citations regarding such a correction of the register. However, the Board's decision does provide some legal citations regarding the statutory obligations and the Director's corresponding ability or inability to waive requirements of the Trademark Rules.

Counsel for I.O.B. Realty attempted to contact the Trademark Solicitor's office to obtain guidance on this topic. Specifically, counsel is seeking any Office policy or directives regarding a judge's authority under such a situation or, in the alternative, any historical precedent known to the Office of a registration being restored after the expiration of the period for the Section 8 Declaration.

Counsel is not seeking an advisory opinion. Counsel is merely attempting to satisfy the Court's request with the best information possible. Therefore, I.O.B. Realty asks the Board or the Commissioner to inform counsel if the Trademark Office has any policy regarding such a situation or if the Trademark Office has ever corrected the register or refused to correct the Register after receiving an order from a district court under the same procedural circumstances. Counsel will relay the information to Judge Irizarry without comment.

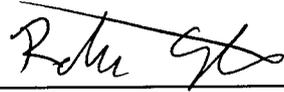
**4. Conclusion**

If the Board's "termination" on July 17, 2007, of these two cancellation proceedings was a final, appealable order, reconsideration is requested. Acceptance of the accompanying Section 8 Declaration is also requested.

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If additional briefing is desirable, counsel asks that the Board request such briefing and grant the Parties sufficient time to brief these topics.

27 July 2007  
Date



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**Attorneys for Registrant  
I.O.B. Realty, Inc.**

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing I.O.B. REALTY'S REQUEST FOR RECONSIDERATION was served this date via first class mail, postage prepaid, on counsel for Petitioner Patsy's Brand, Inc., as follows:

Mr. Norman H. Zivin  
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27 July 2007  
Date

  
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