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

Mailed: April 19, 2007

Cancellation No. 92044330

Charleston Child, LLC

v.

Iluminada Patio Hunter

George C. Pologeorgis, Interlocutory Attorney:

On June 30, 2006, the Board issued an order allowing petitioner to show cause why the Board should not treat its failure to file a brief a concession of the case under Trademark Rule 2.128(a)(3).

On August 9, 2006, petitioner filed a response to the Board's show cause order and a motion to reopen discovery and testimony periods.[1] Respondent has filed an opposition to the motion to reopen.

In its response and support of its motion, petitioner contends that it never received the Board's September 1, 2005 order setting aside respondent's default and resetting dates. Additionally, petitioner states that it received no

[1] The Board notes that petitioner's response to the Board's show cause order was not timely filed. Nonetheless, the Board, in its

discovery notification from respondent which would have alerted petitioner that the proceeding had been reinstated. Moreover, petitioner argues that there exist compelling and strong grounds for instituting this cancellation proceeding. Specifically, petitioner alleges that evidence exists which suggests that respondent is not currently using the subject mark and has never used the mark in interstate commerce.

In opposition to petitioner's motion to reopen, respondent alleges that it provided petitioner with service copies of its answer and its response to the Board's September 1, 2006 notice of default. In view thereof, respondent argues that petitioner should have known that respondent intended to defend its registration. Additionally, respondent claims that it obtained notice of the Board's September 1, 2006 order setting aside respondent's default.

Turning first to the Board's show cause order, we accept petitioner's response as establishing that it has not lost interest in this case. Accordingly, the show cause order is hereby discharged.

We now turn to petitioner's motion to reopen. After a careful review of petitioner's motion and respondent's opposition thereto, the Board has determined that its September 1, 2005 order setting aside respondent's default

---

discretion, has decided to entertain the merits of petitioner's

may not have actually been mailed to either of the parties. The Board bases its decision on petitioner's contention that it never received the September 1, 2005 order, as well as respondent's contention that it only "obtained noticed" of said order and not that it actually received the order in the mail.

In view thereof, the Board, its discretion, finds it appropriate under these circumstances to reset discovery for the limited period requested by petitioner, as well as reset testimony accordingly.[2]

Discovery and trial dates are, therefore, reset as follows:

DISCOVERY TO CLOSE:	**June 3, 2007**
Thirty-day testimony period for party in position of plaintiff to close:	**September 1, 2007**
Thirty-day testimony period for party in position of defendant to close:	**October 31, 2007**
Fifteen-day rebuttal testimony period to close:	**December 15, 2007**

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served

---

response.

[2] In light of the instant order, petitioner's motion to reopen discovery and reset trial dates is deemed moot and will be given no further consideration.

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 Rules 2.128(a) and (b).

An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

*****