

Goodman

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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**THIS OPINION IS NOT CITABLE
AS PRECEDENT OF
THE T.T.A.B.**

Mailed: October 12, 2006

Cancellation No. 92044571

200 Kelsey Associates, LLC

v.

DELAN ENTERPRISES INCORPORATED

Before Hairston, Grendel and Zervas, Administrative
Trademark Judges.

By the Board:

Delan Enterprises Incorporated ("respondent") is the
owner of record of the mark



for "women's dresses"¹ and "women's dresses, pant suits,
pants, shorts, culottes, blouses, jackets, vests and coats"²
in International Class 25.

200 Kelsey Associates, LLC ("petitioner"), seeks
cancellation of respondent's registrations on the ground

¹ Registration No. 549924, issued October 23, 1951. Section 9
(third renewal) granted December 13, 2001.

² Registration. No. 937651, issued July 11, 1972; Section 9
(second renewal) granted December 13, 2001.

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that respondent has "abandoned the trademark JONATHAN LOGAN and has no intent to re-establish such use" and that petitioner has determined from its investigation that "Registrant appears to have ceased using the mark in connection with clothing in Class 25 several years ago."

In its answer, respondent denied the salient allegations of the petition to cancel.

This case now comes up on the respondent's motion, filed January 23, 2006, for summary judgment on ground of abandonment. The motion is fully briefed.

A party is entitled to summary judgment when it has demonstrated that there are no genuine issues as to any material facts, and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The evidence must be viewed in a light favorable to the nonmoving party, and all justifiable inferences are to be drawn in the nonmovant's favor. *Lloyd's Food Products Inc. v. Eli's Inc.*, 987 F.2d 766, 767, 25 USPQ2d 2027 (Fed. Cir. 1993).

Upon careful consideration of the arguments and evidence presented by the parties, and drawing all reasonable inferences in favor of the nonmoving party, we find that a genuine issue of material fact exists with respect to whether respondent has been continuously using the subject mark in the three-year period preceding the filing of the petition to cancel.

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In view thereof, respondent's motion for summary judgment is denied.³

Proceedings are resumed.

Discovery and trial dates are reset as follows:

DISCOVERY PERIOD TO CLOSE:	February 12, 2007
30-day testimony period for party in position of plaintiff to close:	May 13, 2007
30-day testimony period for party in position of defendant to close:	July 12, 2007
15-day rebuttal testimony period for party in position of plaintiff to close:	August 26, 2007

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

³ The fact that we have identified and discussed a genuine issue of material fact as a sufficient basis for denying respondent's motion for summary judgment should not be construed as a finding that this is necessarily the only issue that remains for trial.