

Wolfson

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

**THIS OPINION IS NOT CITABLE
AS PRECEDENT OF
THE T.T.A.B.**

Mailed: May 2, 2006

Cancellation No. **92044751**

KRISTALL CLASSICS, INC.

v.

THE DIAMONDS OF RUSSIA LTD.

Before Holtzman, Bucher and Kuhlke, Administrative Trademark Judges.

By the Board:

This case now comes before the Board for consideration of petitioner's contested motion for summary judgment (filed September 9, 2005). Petitioner's motion is facially defective for the reasons stated below.

Petitioner filed its petition to cancel seeking to cancel registration no. 2728636 for the mark CLEARLY SUPERIOR KRISTALL THE DIAMONDS OF RUSSIA. However, petitioner's motion for summary judgment seeks "[an] order of summary judgment granting cancellation of Certificate of

Cancellation No. 92044751

Registration No. 2,920,296 for the trademark KRISTALL THE DIAMONDS OF RUSSIA."¹

Office records indicate that no petition has been filed to cancel registration no. 2920296. While registration no. 2920296 has been referenced in certain of the exhibits attached to Mr. Hagggar's declaration, the Board cannot presume that the evidentiary record would be the same if petitioner's summary judgment motion had been directed to the mark that is the subject of this proceeding, i.e., registration no. 2728636 for the mark CLEARLY SUPERIOR KRISTALL THE DIAMONDS OF RUSSIA, and not to registration no. 2920296.

Accordingly, petitioner's motion for summary judgment is hereby denied. To the extent that respondent is moving for summary judgment on the issue of petitioner's standing and/or its ownership of the KRISTALL mark, respondent has not met its burden of showing that there are no genuine issues of material fact as to those matters, and any such motion is accordingly denied.

Trial dates, including the close of discovery, are reset as indicated below.

¹ In addition, in its Memorandum of Points and Authorities, petitioner also refers to registration no. 2920296; and Chad Hagggar, petitioner's president, identifies registration no. 2920296 as being the one "which is sought to be cancelled in this proceeding." *Hagggar Declaration*, p. 3.

DISCOVERY PERIOD TO CLOSE:	September 1, 2006
30-day testimony period for party in the position of plaintiff to close:	November 30, 2006
30-day testimony period for party in the position of the defendant to close:	January 29, 2007
15-day rebuttal period for party in the position of the plaintiff to close:	March 15, 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.