

ESTTA Tracking number: **ESTTA59587**

Filing date: **12/28/2005**

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

Proceeding	92045147
Party	Plaintiff Metro Q
Correspondence Address	Kenneth R. Glaser/ Thomas C. Wright Gardere Wynne Sewell, LLP 1601 Elm Street, Suite 3000 Dallas, TX 75201-4761 ip@gardere.com, lhemphill@gardere.com
Submission	Motion for Default Judgment
Filer's Name	Lisa R. Hemphill
Filer's e-mail	ip@gardere.com, lhemphill@gardere.com
Signature	/Lisa R. Hemphill/
Date	12/28/2005
Attachments	MetroQPetitionMDJ.pdf (8 pages)

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

METRO Q	§	
	§	
Petitioner,	§	
	§	
v.	§	Cancellation No. 92045147
	§	Registration No. 2,119,139
GAY & LESBIAN YELLOW PAGES, INC.,	§	
	§	
Respondent/Registrant.	§	

**PETITIONER’S MOTION FOR DEFAULT JUDGMENT FOR
REGISTRANT’S FAILURE TO FILE AN ANSWER**

Pursuant to 37 C.F.R. § 2.114(a), METRO Q (“Petitioner”) moves the Trademark Trial and Appeal Board (“Board”) to enter a show cause order as to why default judgment should not be entered against Respondent/Registrant.

Petitioner filed a Petition for Cancellation on November 8, 2005 (Exhibit 1 attached). The Board, by Notice dated November 12, 2005 (Exhibit 2 attached), notified Respondent/Registrant of the filing of the subject Cancellation and specified that an Answer would be due 40 days from the date of mailing. Therefore, pursuant to the Board’s Notice, an Answer was due on December 22, 2005.

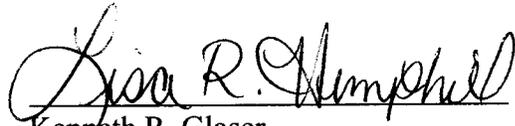
To date, Petitioner has not been served with an Answer, the on-line review of the Trademark Trial and Appeal Board website reflects the absence of an Answer, and to Petitioner’s knowledge, no Answer has been filed.

WHEREFORE, Petitioner respectfully prays that a show cause order be issued as to why its Cancellation should not be sustained and a judgment entered against Respondent/Registrant by default.

It is believed that no fee is due. If this is incorrect, the Commissioner is hereby authorized to charge any fees which may be required by this paper to Deposit Account No. 070153.

Date: 12/28/05

Respectfully submitted,



Kenneth R. Glaser
Lisa R. Hemphill

ATTORNEYS FOR PETITIONER
METRO Q

GARDERE WYNNE SEWELL LLP
3000 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201
(214) 999-3000
(214) 999-4667 (FAX)

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing "PETITIONER'S MOTION FOR DEFAULT JUDGMENT FOR REGISTRANT'S FAILURE TO FILE AN ANSWER" was mailed via First Class U.S. mail, postage prepaid, on the 28th day of December, 2005 to the following:

Gay & Lesbian Yellow Pages, Inc.
Suite 480, 4200 Montrose Boulevard
Houston, Texas 77006

And

Gay & Lesbian Yellow Pages, Inc.
1712 Montrose Boulevard
Houston, Texas 77006



GAY YELLOW PAGES mark which were relied upon by the Patent and Trademark Office. Specifically, on May 6, 1996, Respondent executed an erroneous Declaration which was filed on July 1, 1996 with the application for registration of the GAY YELLOW PAGES mark. The Declaration stated that to the best of Respondent's knowledge, "no other person, firm, corporation or association" had the right to use Gay Yellow Pages, in commerce, "either in the identical form thereof or such near resemblance thereto as to be likely...to cause confusion..." Respondent has now taken the position that "Gay Pages" is essentially identical to "Gay Yellow Pages." The Declaration was therefore false in that, contrary to Respondent's sworn representation, other business entities respectively named "Gay Pages" and "Gayellow Pages" were operating and known by Respondent at the time this Declaration was executed.

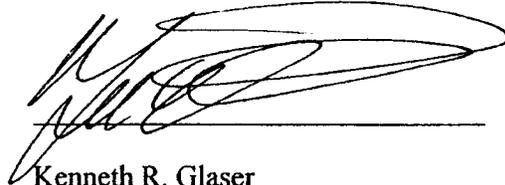
4. Additionally, following the rejection of the application for the present registration by the examining attorney, Respondent filed a second false Declaration, executed June 24, 1997, swearing under oath that Respondent's use of the Gay Yellow Pages had been substantially exclusive for a period of five years preceding the date of the second Declaration. Contrary to that assertion, however, Respondent was aware at the time of numerous business entities bearing the names "gay pages, "*gayellow pages*", as well as names similar thereto.

5. Upon information and belief, the Respondent has permitted the use of the GAY YELLOW PAGES mark by others, but has failed to adequately control the quality and nature of the goods and services with which it used. Accordingly, the Respondent has legally abandoned the GAY YELLOW PAGES mark.

WHEREFORE, by reason of the aforementioned grounds, Petitioner prays that, pursuant to the authority of 15 U.S.C. 1064, this cancellation petition be granted and that the above-identified registration of Respondent, Registration No. 2,119,139, be canceled.

Respectfully submitted,

Date: November 8, 2009



Kenneth R. Glaser
Thomas C. Wright
GARDERE WYNNE SEWELL LLP
3000 Thanksgiving Tower
1601 Elm Street, Suite 3000
Dallas, Texas 75201-4761
Tel: 214-999-3000
Fax: 214-999-4667

ATTORNEYS FOR PETITIONER

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

Mailed: November 12, 2005

Gay & Lesbian Yellow Pages, Inc.
Ste. 480 4200 Montrose Blvd.
Houston, TX 77006

Cancellation No. 92045147
Reg. No. 2119139

Kenneth R. Glaser/ Thomas C. Wright
Gardere Wynne Sewell, LLP
1601 Elm Street, Suite 3000
Dallas, TX 75201-4761

Metro Q

V.

Gay & Lesbian Yellow Pages, Inc.

Torri Rodgers, Legal Assistant

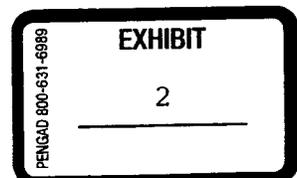
A petition, a copy of which is attached, has been filed to cancel the above-identified registration.

Proceedings will be conducted in accordance with the Trademark Rules of Practice.

ANSWER IS DUE FORTY DAYS after the mailing date hereof. (See Trademark Rule 2.196 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that affect the rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003); Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003). Notices concerning the rules changes, as well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), are available at www.uspto.gov/web/offices/dcom/ttab/.

The parties are particularly referred to Trademark Rule 2.126 pertaining to the form of submissions. Paper submissions, including but not limited to exhibits and depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.



Discovery and testimony periods are set as follows:

Discovery period to open: December 02, 2005

Discovery period to close: May 31, 2006

30-day testimony period for party
in position of plaintiff to close: August 29, 2006

30-day testimony period for party
in position of defendant to close: October 28, 2006

15-day rebuttal testimony period
for plaintiff to close: December 12, 2006

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). The notice is available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

New Developments at the Trademark Trial and Appeal Board

TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at <http://estta.uspto.gov>. Images of TTAB proceeding files can be viewed using TTABVue at <http://ttabvue.uspto.gov>.