

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

Mailed: May 27, 2010

Cancellation No. 92048118

Jack Richeson & Co., Inc.

v.

Select Export Corp. dba
Trident

George C. Pologeorgis, Interlocutory Attorney:

By Board order dated March 9, 2010, the Board suspended this proceeding for the sole purpose of allowing petitioner to take the testimonial deposition of Domingos Zanocco, who is one of petitioner's witnesses and a resident of Brazil, upon written questions pursuant to Trademark Rule 2.124.

On May 26, 2010, petitioner filed a communication with the Board advising that Mr. Zanocco's testimonial deposition

upon written questions has been completed and a transcript has been sent to registrant's counsel.¹

In view thereof, proceedings herein are resumed and trial dates are reset as set forth below:

DISCOVERY PERIOD TO CLOSE:	CLOSED
Testimony period for party in position of plaintiff to close: (opening thirty days prior thereto)	7/15/2010
Testimony period for party in position of defendant to close:(opening thirty days prior thereto)	9/13/2010
Rebuttal testimony period to close: (opening fifteen days prior thereto)	10/28/2010

¹The Board notes that petitioner's notice of taking a testimonial deposition upon written questions, which accompanied petitioner's motion to suspend, filed on December 7, 2009, should have been served upon respondent's counsel within ten days **after** the opening of petitioner's testimony period, as last reset, as well as filed with the Board. See Trademark Rule 2.124(b)(1) (emphasis added). Moreover, it was unnecessary for petitioner to file a motion to suspend for taking a testimonial deposition upon written questions inasmuch as the Board generally suspends proceedings once it receives a notice of taking a deposition upon written questions. See Trademark Rule 2.124(d)(2). However, in order to expedite this case and since the parties fully briefed petitioner's motion to suspend on the merits, the Board, in its discretion, waived the timeliness issue regarding petitioner's notice of taking a deposition upon written question and construed petitioner's motion to suspend as a request to take testimony outside of petitioner's assigned testimony period which the Board granted on March 9, 2010. See Trademark Rule 2.121(a). Petitioner is advised that the transcript of Mr. Zanoocco's testimonial deposition, together with copies of documentary exhibits and duplicates or photographs of physical exhibits must be filed promptly with the Board. Trademark Rule 2.124(f). By "promptly" the Board means that the transcript, with exhibits, may be filed at any time prior to submission of the case for final decision. See TBMP § 703.02(i) (2nd ed. rev. 2004).

Cancellation No. 92048118

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.