

Goodman

**THIS OPINION IS NOT A
PRECEDENT
OF THE TTAB**

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

Mailed: September 27, 2013

Cancellation No. 92048732

Altvater Gessler - J.A.
Baczewski International (USA)
Inc. and Altvater Gessler -
J.A. Baczewski GmbH

v.

Ronald Beckenfeld

**Before Taylor, Bergsman and Kuczma, Administrative
Trademark Judges.**

By the Board:

This case now comes up on the following motions:

- 1) respondent's motion, filed March 18, 2013, for summary judgment on the ownership claim¹ and
- 2) petitioners' motion, filed May 31, 2013, to amend the petition to cancel.

We turn first to the motion to amend.

The Board's order of April 13, 2013 suspending proceedings for summary judgment advised that any paper filed that was not relevant to the motion for summary judgment would be given no consideration. Inasmuch as the

¹ Petitioners' response brief is overlength, as it is 28 pages, including table of contents and table of authorities and therefore, it is procedurally improper and not in technical compliance with Trademark Rule 2.127(a). We have not considered petitioners' summary judgment response brief; however, in our discretion, we have considered petitioners' exhibits attached thereto.

motion to amend is not germane to the motion for summary judgment, it will not be considered.² Petitioners are free to refile the motion at a later date.

We now turn to respondent's motion for summary judgment.

A party is entitled to summary judgment when it has demonstrated that there is no genuine dispute as to any material fact and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). In reviewing a motion for summary judgment, the evidentiary record and all reasonable inferences to be drawn from the undisputed facts must be viewed in the light most favorable to the nonmoving party. *Olde Tyme Foods Inc. v. Roundy's Inc.*, 961 F.2d 200, 22 USPQ2d 1542, 1544 (Fed. Cir. 1992).

With respect to the ownership claim, the terms of the parties' purported agreement, consisting of multiple documents, are ambiguous. Because the Board must consider extrinsic evidence regarding the terms of the parties' agreement, assess the credibility of witnesses on this point, and make inferences from the facts, this dispute is not amenable to summary judgment. At a minimum, genuine disputes of material fact remain regarding the

² Petitioners seek to add three fraud claims, a claim of abandonment due to naked licensing, and to clarify the basis for the ownership claim.

circumstances surrounding the execution of the documents, and the meaning of the ambiguous terms in the parties' agreement (e.g., whether petitioner assigned the mark to respondent's predecessor-in-interest or whether they entered into a distributorship agreement or some other type of agreement).³

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

Proceedings are resumed.

Dates are reset as follows:

Plaintiff's Pretrial Disclosures Due	12/7/2013
Plaintiff's 30-day Trial Period Ends	1/21/2014
Defendant's Pretrial Disclosures Due	2/5/2014
Defendant's 30-day Trial Period Ends	3/22/2014
Plaintiff's Rebuttal Disclosures Due	4/6/2014
Plaintiff's 15-day Rebuttal Period Ends	5/6/2014

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

³ The fact that we have identified and discussed certain genuine disputes of material fact as a sufficient basis for denying respondent's motion for summary judgment should not be construed as a finding that these are necessarily the only disputes which remain for trial.

The parties should note that the evidence submitted in connection with the motion for summary judgment is of record only for consideration of the motion for summary judgment. Otherwise, to be considered at final hearing, any such evidence must be properly introduced in evidence during the appropriate trial period. *Levi Strauss & Co. v. R. Josephs Sportswear Inc.*, 28 USPQ2d 1464, 1465 n. 2 (TTAB 1993).

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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.