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ESTTA Tracking number: **ESTTA211527**

Filing date: **05/15/2008**

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

Proceeding	92049029
Party	Plaintiff Mr. David J. Long, Jr.
Correspondence Address	Mr. David J Long Jr. Taste of South Jersey 2050 Delsea Drive Sewell, NJ 08080 UNITED STATES pr@foodpresswire.com, editor@homeandtowne.com
Submission	Other Motions/Papers
Filer's Name	/david j. long jr./
Filer's e-mail	editor@tasteofsouthjersey.com, pr@foodpresswire.com
Signature	/david j. long jr./
Date	05/15/2008
Attachments	ReplyBrief.pdf (13 pages)(302805 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRAIL AND APPEAL BOARD

In the matter of trademark registration No. 2969604

For the mark TASTE OF SOUTH JERSEY

Date registered: July 19, 2005

David J. Long Jr.

v.

Review Publishing Limited Partnership

PLAINTIFF'S REPLY BRIEF

Petitioner respectfully request that the Commissioner of Trademarks and the Board to only consider this single brief in response to the opposing party or attorney for the opposing party's motion to dismiss pursuant to Rule 2.127.

Petitioner admits that he is acting on his on behalf, pro se, and respectfully pleads with the Board to only consider this single brief as it is germane to the opposing party or attorney for the opposing party's motion.

Petitioner, strongly oppose the Motion to Dismiss as filed by Dechert LLP, attorneys for the registrant/defendant pursuant to Rule 2.117(b): Whenever there is pending before the Board a motion which is potentially dispositive of the case, the potentially dispositive motion may be decided before the question of suspension is considered regardless of the order in which the motions were filed.

ARGUMENT

Pursuant to Rule 10.143. Petitioner attests under penalties of perjury that he has made every attempt to confer with the opposing party or attorney for the opposing party on numerous occasions by telephone, email, first class mail and registered mail in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach agreement.

Petitioner attests that the opposing party or attorney for the opposing party has acted unfairly and has made every attempt to disregard the petitioner's dispute with the registered mark 2969604.

In addition, Petition states that the opposing party or attorney for the opposing party have misled the Board as to actual occurrences as it relates to the petitioner's dispute with the validity of the registered mark 2969604.

Petition states that the opposing party or attorney for the opposing party has misled the petitioner as to their intent to try and resolve the dispute before the petitioner filed his Petition to Cancel on March 18, 2008.

Petition states that the opposing party or attorney for the opposing party is utilizing unfair tactics and unfair legal maneuvers in an attempt to deny the plaintiff his right to file a petition to cancel pursuant to Rule 2.111(b) by filing the motion to dismiss. And that the motion is an attempt to mislead the Board as to the merits of the petitioner's material issues of fact.

Petitioner asserts that by evidence of papers filed by the opposing party or attorney for the opposing party and proof of service of process attached hereto as **Exhibit A** and **Exhibit B** that registrant and attorneys for the defendant received sufficient service of process and notification of the Petition to Cancel whether or not they chose to recognize plaintiff's first attempt to serve process. Defendant received notification of the proceeding 92049029 prior to the opposing party or attorney for the opposing party's filing the motion to dismiss or the motion would not have been filed.

EXHIBIT A

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

Mailed: March 18, 2008

Cancellation No. 92049029
Registration No. 2969604

Review Publishing Limited Partnership
1500 Sansom Street, 3rd Floor
Philadelphia, PA 19102

Mr. David J. Long, Jr.

v.

Review Publishing Limited Partnership

Mr. David J Long, Jr.
Taste of South Jersey
2050 Delsea Drive
Sewell, NJ 08080

Veronica P. White, Paralegal Specialist:

A petition to cancel the above-identified registration has been filed. A service copy of the petition for cancellation was forwarded to registrant (defendant) by the petitioner (plaintiff). An electronic version of the petition for cancellation is viewable in the electronic file for this proceeding via the Board's TTABVUE system: http://ttabvue.uspto.gov/ttabvue/.

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 ("Trademark Rules"). These rules may be viewed at the USPTO's trademarks page: http://www.uspto.gov/main/trademarks.htm. The Board's main webpage (http://www.uspto.gov/web/offices/dcom/ttab/) includes information on amendments to the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a web link to the Board's manual of procedure (the TBMP).

Plaintiff must notify the Board when service has been ineffective, within 10 days of the date of receipt of a returned service copy or the date on which plaintiff learns that service has been ineffective. Plaintiff has no subsequent duty to investigate the defendant's whereabouts, but if plaintiff by its own voluntary investigation or through any other means discovers a newer correspondence address for the defendant, then such address must be provided to the Board. Likewise, if by voluntary investigation or other means the plaintiff discovers information indicating that a different party may have an interest in defending the case, such information must be provided to the Board. The

Board will then effect service, by publication in the Official Gazette if necessary. *See* Trademark Rule 2.118. In circumstances involving ineffective service or return of defendant's copy of the Board's institution order, the Board may issue an order noting the proper defendant and address to be used for serving that party.

Defendant's ANSWER IS DUE FORTY DAYS after the mailing date of this order. (*See* Patent and Trademark Rule 1.7 for expiration of this or any deadline falling on a Saturday, Sunday or federal holiday.) **Other deadlines the parties must docket or calendar are either set forth below (if you are reading a mailed paper copy of this order) or are included in the electronic copy of this institution order viewable in the Board's TTABVUE system at the following web address: http://ttabvue.uspto.gov/ttabvue/.**

Defendant's answer and any other filing made by any party must include proof of service. *See* Trademark Rule 2.119. **If they agree to, the parties may utilize electronic means, e.g., e-mail or fax, during the proceeding for forwarding of service copies.** *See* Trademark Rule 2.119(b)(6).

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

Time to Answer	4/27/08
Deadline for Discovery Conference	5/27/08
Discovery Opens	5/27/08
Initial Disclosures Due	6/26/08
Expert Disclosures Due	10/24/08
Discovery Closes	11/23/08
Plaintiff's Pretrial Disclosures	1/7/09
Plaintiff's 30-day Trial Period Ends	2/21/09
Defendant's Pretrial Disclosures	3/8/09
Defendant's 30-day Trial Period Ends	4/22/09
Plaintiff's Rebuttal Disclosures	5/7/09
Plaintiff's 15-day Rebuttal Period Ends	6/6/09

As noted in the schedule of dates for this case, the parties are required to have a conference to discuss: (1) the nature of and basis for their respective claims and defenses, (2) the possibility of settling the case or at least narrowing the scope of claims or defenses, and (3) arrangements relating to disclosures, discovery and introduction of evidence at trial, should the parties not agree to settle the case. *See* Trademark Rule 2.120(a)(2). Discussion of the first two of these three subjects should include a discussion of whether the parties wish to seek mediation, arbitration or some other means for resolving their dispute. Discussion of the third subject should include a discussion of whether the Board's Accelerated Case Resolution (ACR) process may be a more efficient and economical means of trying the involved claims and defenses. Information on the ACR process is available at the Board's

main webpage. Finally, if the parties choose to proceed with the disclosure, discovery and trial procedures that govern this case and which are set out in the Trademark Rules and Federal Rules of Civil Procedure, then they must discuss whether to alter or amend any such procedures, and whether to alter or amend the Standard Protective Order (further discussed below). Discussion of alterations or amendments of otherwise prescribed procedures can include discussion of limitations on disclosures or discovery, willingness to enter into stipulations of fact, and willingness to enter into stipulations regarding more efficient options for introducing at trial information or material obtained through disclosures or discovery.

The parties are required to conference in person, by telephone, or by any other means on which they may agree. A Board interlocutory attorney or administrative trademark judge will participate in the conference, upon request of any party, provided that such participation is requested no later than ten (10) days prior to the deadline for the conference. *See* Trademark Rule 2.120(a)(2). The request for Board participation must be made through the Electronic System for Trademark Trials and Appeals (ESTTA) or by telephone call to the interlocutory attorney assigned to the case, whose name can be found by referencing the TTABVUE record for this case at **http://ttabvue.uspto.gov/ttabvue/**. The parties should contact the assigned interlocutory attorney or file a request for Board participation through ESTTA only after the parties have agreed on possible dates and times for their conference. Subsequent participation of a Board attorney or judge in the conference will be by telephone and the parties shall place the call at the agreed date and time, in the absence of other arrangements made with the assigned interlocutory attorney.

The Board's Standard Protective Order is applicable to this case, but the parties may agree to supplement that standard order or substitute a protective agreement of their choosing, subject to approval by the Board. The standard order is available for viewing at: **http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm**. Any party without access to the web may request a hard copy of the standard order from the Board. The standard order does not automatically protect a party's confidential information and its provisions must be utilized as needed by the parties. *See* Trademark Rule 2.116(g).

Information about the discovery phase of the Board proceeding is available in chapter 400 of the TBMP. By virtue of amendments to the Trademark Rules effective November 1, 2007, the initial disclosures and expert disclosures scheduled during the discovery phase are required only in cases commenced on or after that date. The TBMP has not yet been amended to include information on these disclosures and the parties are referred to the August 1, 2007 Notice of Final Rulemaking (72 Fed. Reg. 42242) posted on the Board's webpage. The deadlines for pretrial disclosures included in the trial phase of the schedule for this case also resulted from the referenced amendments to the Trademark Rules, and also are discussed in the Notice of Final Rulemaking.

The parties must note that the Board allows them to utilize telephone conferences to discuss or resolve a wide range of interlocutory matters that may arise during this case. In addition, the assigned interlocutory attorney has discretion to require the parties to participate in a telephone conference to resolve matters of concern to the Board. *See* TBMP § 502.06(a) (2d ed. rev. 2004).

The TBMP includes information on the introduction of evidence during the trial phase of the case, including by notice of reliance and by taking of testimony from witnesses. *See* TBMP §§ 703 and 704. Any notice of reliance must be filed during the filing party's assigned testimony period, with a copy served on all other parties. Any testimony of a witness must be both noticed and taken during the party's testimony period. A party that has taken testimony must serve on any adverse party a copy of the transcript of such testimony, together with copies of any exhibits introduced during the testimony, within thirty (30) days after the completion of the testimony deposition. *See* Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing after briefing is not required but will be scheduled upon request of any party, as provided by Trademark Rule 2.129.

If the parties to this proceeding are (or during the pendency of this proceeding become) parties in another Board proceeding or a civil action involving related marks or other issues of law or fact which overlap with this case, they shall notify the Board immediately, so that the Board can consider whether consolidation or suspension of proceedings is appropriate.

ESTTA NOTE: For faster handling of all papers the parties need to file with the Board, the Board strongly encourages use of electronic filing through the Electronic System for Trademark Trials and Appeals (ESTTA). Various electronic filing forms, some of which may be used as is, and others which may require attachments, are available at **http://estta.uspto.gov**.

EXHIBIT B

Read Message

Previous Next Move To Select One

OK REPLY REPLY ALL FORWARD FULL HEADERS EXPORT PRINT
DELETE REPORT SPAM

From: Anthony Clifton <aclifton@reviewpublishing.com>

[add to contacts]

To: 'FOOD PRESS WIRE' <pr@foodpresswire.com>
Cc:

Date: Tuesday, March 18, 2008 07:32 pm
Subject: Read: TASTE OF SOUTH JERSEY Notice attached!

Your message

To: aclifton@reviewpublishing.com
Cc: gmonte@reviewpublishing.com; jstokes@reviewpublishing.com; glenn.gundersen@dechert.com
Subject: Re: TASTE OF SOUTH JERSEY Notice attached!
Sent: 3/18/2008 4:38 PM

was read on 3/18/2008 7:32 PM.

Attachments: Text version of this message. (267B)
(235B)

OK REPLY REPLY ALL FORWARD
DELETE REPORT SPAM

Previous Next

Read Message

Previous Next Move To Select One

OK REPLY REPLY ALL FORWARD FULL HEADERS EXPORT PRINT
DELETE REPORT SPAM

From: Gundersen, Glenn <glenn.gundersen@dechert.com>

[add to contacts]

To: FOOD PRESS WIRE <pr@foodpresswire.com>
Cc:

Date: Tuesday, March 18, 2008 05:21 pm
Subject: Read: Re: TASTE OF SOUTH JERSEY Notice attached!

Your message

To: aclifton@reviewpublishing.com
Cc: gmonte@reviewpublishing.com; jstokes@reviewpublishing.com;
Gundersen, Glenn
Subject: Re: TASTE OF SOUTH JERSEY Notice attached!
Sent: Tue, 18 Mar 2008 16:38:21 -0400

was read on Tue, 18 Mar 2008 17:21:28 -0400

"EMF <dechert.com>" made the following annotations.

This e-mail is from Dechert LLP, a law firm, and may contain information that is confidential or privileged. If you are not the intended recipient, do not read, copy or distribute the e-mail or any attachments. Instead, please notify the sender and delete the e-mail and any attachments. Thank you.
==========

Attachments: Text version of this message. (970B)
(238B)

OK REPLY REPLY ALL FORWARD
DELETE REPORT SPAM

Previous Next

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Track & Confirm FAQs

Track & Confirm

Search Results

Label/Receipt Number: 7006 0810 0005 3405 9705
Status: Delivered

Your item was delivered at 11:54 AM on April 28, 2008 in PHILADELPHIA, PA 19102.

Additional Details > Return to USPS.com Home >

Track & Confirm

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Label/Receipt Number: 7006 0810 0005 3405 9729
Status: Delivered

Your item was delivered at 11:51 AM on April 28, 2008 in PHILADELPHIA, PA 19102.

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Get current event information or updates for your item sent to you or others by email. Go >

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I, the petitioner/pro se respectfully request the Commissioner of Trademarks and the Board to reopen the Proceeding 92049029 and refer the parties to Accelerated Case Resolution (ACR).

Respectfully submitted,

/david j. long jr./

David J. Long Jr., T/A: The Taste of South Jersey

2050 Delsea Drive, Sewell, NJ 08080 • (856) 232-2299

May 15, 2008

CERTIFICATE OF SERVICE

I hereby certify that a copy of this paper filing has been duly served by mailing a copy, first class, postage pre-paid to both the law firm Dechert LLP, Circa Centre, 2929 Arch Street, Philadelphia, PA 19104, and the Defendant, Review Publishing Limited Partnership, 1500 Samson Street, 3rd Floor, Philadelphia, PA 19102.

____/david j. long jr./_____