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

Lykos

Mailed: August 22, 2008

Cancellation No.92049029

Mr. David J. Long, Jr.

v.

Review Publishing Limited Partnership

Before Seeherman, Grendel, and Walsh, Administrative Trademark Judges.

By the Board:

This case now comes before the Board for consideration of respondent's motion (filed April 23, 2008) to dismiss this cancellation proceeding for insufficient service of process pursuant to Trademark Rules 2.111(b) and 2.119(b). The motion is fully briefed.[1]

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[1] Petitioner improperly filed multiple briefs in opposition to respondent's motion. See Trademark Rule 2.127(a). Although petitioner is acting pro se in this proceeding, he is nonetheless required to comply with all applicable rules. While Patent and Trademark Rule 10.14 permits any person to represent himself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in a cancellation proceeding to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney. Petitioner is advised to refer to the Trademark Trial and Appeal Board Manual of Procedure (TBMP) and the Trademark Rules of Practice, both available on the USPTO website, *www.uspto.gov*.

For the reasons set forth below, we agree with respondent that the petition to cancel was improperly served.

The Board will not institute a cancellation proceeding unless the petition to cancel has been properly served on the owner of record for the registration. A petition for cancellation may be served by electronic transmission (e-mail or facsimile), but only if the parties have agreed to service in this manner. Trademark Rule 2.119(b)(6).

On March 18, 2008, petitioner filed his petition with the Board via the Electronic System for Trademark Trial and Appeals (ESTTA), and indicated on the ESTTA cover sheet that he served the petition by electronic transmission pursuant to an agreement between the parties. Respondent does not dispute that petitioner e-mailed a copy of the complaint to respondent and counsel for respondent on the same date the petition was filed with the Board. The record shows, however, that neither respondent nor its legal counsel previously agreed to service of the petition via e-mail. See Declarations of Glenn A. Gundersun, Erik Bertin and Hal F. Borden, counsel for respondent, and exhibits attached thereto. As such, the petition to cancel was not served in conformity with the Trademark Rules of Practice.

Petitioner subsequently attempted to remedy this defect in service by mailing a copy of the petition to counsel for respondent via certified mail on April 25, 2008. Petitioner's attempt, however, is of no avail. The petition to cancel must be filed with the Board and served contemporaneously on respondent in a proper manner in any of the ways specified in Trademark Rule 2.119(b) to be viable. *See Springfield Inc. v. XD,* 86 USPQ2d 1063 (TTAB 2008) (opposer's motion to amend notice of opposition to properly effectuate service denied; opposition dismissed as a nullity).

In view of the foregoing, respondent's motion to dismiss is granted, and the cancellation proceeding is dismissed as a nullity.[2]

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[2] In view thereof, petitioner's cross-motion to amend its pleading (filed May 15, 2008) is moot, and petitioner's filing fee will be refunded in due course. Nothing in this order will prevent petitioner from filing a new petition to cancel that conforms to the applicable rules.