

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

MBA

Mailed: June 3, 2009

Cancellation No. 92050200

Game Sportswear, Ltd.

v.

Vandous E. Stripling

**Michael B. Adlin, Interlocutory Attorney:**

On June 1, 2009, at petitioner's request, the Board participated in the parties' telephonic discovery conference mandated under Fed. R. Civ. P. 26(f) and Trademark Rule 2.120(a)(1) and (a)(2). Petitioner was represented by its counsel Thomas A. Gallagher, and respondent represented himself pro se. Interlocutory Attorneys Michael Adlin and Richard Kim participated on behalf of the Board.

During the conference, the parties indicated that they are unaware of any related proceedings, marks or third party disputes. The parties have discussed the possibility of settlement generally, but their settlement efforts have not meaningfully progressed, because respondent is seeking certain assurances from petitioner, and petitioner is seeking certain information from respondent, but neither party has provided what the other is seeking. The Board

commended the parties' apparent desire to settle this proceeding, and encouraged them to work together to provide each other with the necessary assurances and information which would allow for a settlement before either party invests significant time or money in this proceeding.

The Board specifically pointed out petitioner's allegation in ¶ 7 of the petition for cancellation that two of petitioner's applications were refused registration based on respondent's mark, and that petitioners in Board proceedings will sometimes agree to withdraw a petition for cancellation in exchange for a respondent's consent to petitioner's registration of its marks. The Board also pointed out to respondent that the information petitioner is requesting in order to discuss settlement more specifically likely includes at least some information to which petitioner would be entitled during discovery.

Respondent indicated that he plans to continue to represent himself in this proceeding. The Board advised respondent that it is generally recommended that parties retain experienced trademark practitioners to represent them in Board proceedings. The Board also indicated that respondent would be expected to comply with all applicable rules and procedures, including those relating to service of papers, as set forth in 37 C.F.R. § 2.119. Respondent is reminded that information for pro se parties is included at

the end of the Board's order of March 3, 2009, and additional useful information is included in the Board's order instituting this proceeding, dated November 13, 2008.

The Board discussed the pleadings in this case, and specifically the claims in the petition for cancellation. While the precise grounds are not succinctly stated in the petition for cancellation, petitioner confirmed that it seeks cancellation of respondent's registration based on fraud and abandonment. Accordingly, the Board suggested, and the parties agreed, that a primary focus of discovery and trial in this proceeding will likely be the manner, extent and timing of respondent's use of his mark over time.

Because the parties agreed that this case is limited to petitioner's claims of fraud and abandonment, and the facts relevant to these claims appear to be fairly limited, the Board raised the possibility of utilizing its accelerated case resolution ("ACR") procedures

<http://www.uspto.gov/web/offices/com/sol/notices/acrognoticerule.pdf>

as well as the parties' option to stipulate to limits on discovery, abbreviated procedures for submission of evidence and other ways to expedite resolution of this case. See, Target Brands Inc. v. Hughes, 85 USPQ2d 1676 (TTAB 2007).

The Board also discussed the requirement that the parties make initial disclosures, and the possibility of the parties making greater reciprocal disclosures than required by Fed.

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R. Civ. P. 26(a)(1), in lieu of formal discovery. See, "Miscellaneous Changes to Trademark Trial and Appeal Board Rules," 71 Fed. Reg. 2498 (January 17, 2006). The parties each indicated that they would consider these possibilities.

The Board apprised the parties of the Board's standard protective order, made applicable herein by operation of Trademark Rule 2.116(g) and available here:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>

The parties are encouraged to acknowledge their obligations under the protective order in writing, and may utilize the following form:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/ackagrmnt.htm>

The parties were reminded that although discovery opens on June 3, 2009, pursuant to the schedule set forth in the Board's order of March 3, 2009, neither discovery requests nor motions for summary judgment may be served until after initial disclosures are made. Initial disclosures are due no later than July 3, 2009, and all other dates remain as set in the Board's order of March 3, 2009.

#### News from the TTAB

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on

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the USPTO website via these web addresses:

<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>

[http://www.uspto.gov/web/offices/com/sol/notices/72fr42242\\_FinalRuleChart.pdf](http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf)

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>