

1 discovery conference; no such conference was held. Respondent's counsel wrote
2 Petitioner's counsel an e-mail message on February 2, 2009 requesting such a meeting; by
3 that date, the time for requesting the participation of the interlocutory attorney or
4 administrative trademark judge to participate in the conference, the time in which to
5 request one had expired, in light of the 10-day lead time and the February 7, 2009
6 deadline. There were other e-mail messages exchanged between the initial message and the
7 last message on February 13, 2009, but nothing further ever came of such dialogue.

8 5. The November 29, 2008 order established dates for the opening and closing
9 of discovery; Petitioner conducted no discovery whatsoever. The November 29, 2008
10 order also established deadlines for initial and expert disclosures; Petitioner made no
11 disclosures at all. The November 29, 2008 order also established a deadline for Petitioner
12 to make its pretrial disclosures; Petitioner made none.

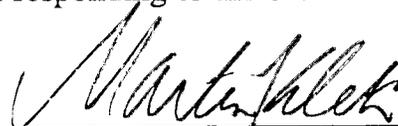
13 6. The Board's May 4, 2010 order to show cause came back as undeliverable;
14 Petitioner's counsel apparently moved, without bothering to notify either Respondent's
15 counsel or the Board of the move.

16 7. In short, the history of this cancellation proceeding is that apart from filing
17 the petition, Petitioner has never lifted a finger to do anything to pursue this proceeding.
18 Petitioner perhaps was surprised that Respondent filed an answer, because Petitioner
19 apparently was never prepared to proceed.

20 8. As to the comment in Respondent's response to the order to show cause that
21 "so far the parties [by which Petitioner means Respondent, although it literally includes
22 Petitioner] have refused to settle," Petitioner never made any settlement offer.

23 9. The complete lack of diligence in pursuing this matter justifies the Board to
24 treat Petitioner's failure to file a brief as a concession or loss of interest in the case, and
25 Petitioner has not met its burden of proof in responding to the order to show cause.

26
27 Dated: July 20, 2010



S. MARTIN KELETI
Attorney for Applicant

Subject: Ulrich et al. v. Riley (TTAB Cancellation No. 92050258)
From: "S. Martin Keleti" <keleti@manifesto.com>
Date: Tue, 03 Feb 2009 15:11:33 -0800
To: gabereed@aol.com
BCC: sriley4927@aol.com
X-Mozilla-Status: 0001
X-Mozilla-Status2: 00800000
BCC: sriley4927@aol.com
Message-ID: <4988CF25.6030301@manifesto.com>
User-Agent: Thunderbird 2.0.0.19 (Windows/20081209)
MIME-Version: 1.0
Content-Type: text/plain; charset=ISO-8859-1; format=flowed
Content-Transfer-Encoding: 7bit

Mr. Reed:

You should have received respondent's answer by now; in addition to serving you a copy by mail, I note that the document is available online on the ttabvue website.

You may recall that after the time to answer, the first deadline is that for a discovery conference (February 7, 2009). That date is this Saturday, so as a practical matter, the deadline is this Friday, February 6, 2009. If you desired a Board interlocutory attorney or administrative trademark judge to participate in the conference, the time in which to request one has expired (participation must be requested at least 10 days in advance).

Please let me know how I should construe your not scheduling a conference with me.

Very truly yours,

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S. Martin Keleti
COHEN AND COHEN
8340 Melrose Avenue
Los Angeles, California 90069-5420
323.655.4444 Telephone
323.655.3333 Facsimile
keleti@manifesto.com

Re: Ulrich et al. v. Riley (TTAB Cancellation No. 92050258)

Subject: Re: Ulrich et al. v. Riley (TTAB Cancellation No. 92050258)
From: GabeReed@aol.com
Date: Tue, 3 Feb 2009 20:07:40 EST
To: keleti@manifesto.com
X-Account-Key: account2
X-UIDL: sm_0002AB9F_724ecae7575e41428302f7f16bb02edd
X-Mozilla-Status: 0013
X-Mozilla-Status2: 00000000
Return-Path: <gabereed@aol.com>
Received: from k080.smtproutes.com [208.70.89.180] by mail.ewhost.com with SMTP; Tue, 3 Feb 2009 17:08:44 -0800
Received: from imo-m21.mx.aol.com ([64.12.137.2]) by k080.smtproutes.com ([192.168.2.180]) with ESMTTP via TCP; 04 Feb 2009 01:08:23 -0000
Received: from GabeReed@aol.com by imo-m21.mx.aol.com (mail_out_v39.1.) id v.bee.3c8df571 (29678) for <keleti@manifesto.com>; Tue, 3 Feb 2009 20:07:40 -0500 (EST)
X-Katharion-ID: 1233709715.27780.k080 (2.0)
Message-ID: <bee.3c8df571.36ba445c@aol.com>
MIME-Version: 1.0
Content-Type: multipart/alternative; boundary="-----1233709660"
X-Mailer: AOL 9.1 sub 5000
X-Spam-Flag: NO
X-SmarterMail-TotalSpamWeight: 0 (IP Whitelisted)

Hi Martin

If you don't mind, lets do the conference on Monday February 9th.

Regards,
Gabe

In a message dated 2/3/2009 5:11:52 P.M. Central Standard Time, keleti@manifesto.com writes:

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Subject: Re: Ulrich et al. v. Riley (TTAB Cancellation No. 92050258)
From: "S. Martin Keleti" <keleti@manifesto.com>
Date: Tue, 03 Feb 2009 17:13:33 -0800
To: GabeReed@aol.com
BCC: sriley4927@aol.com
X-Mozilla-Status: 0001
X-Mozilla-Status2: 00800000
BCC: sriley4927@aol.com
Message-ID: <4988EBBD.1060301@manifesto.com>
User-Agent: Thunderbird 2.0.0.19 (Windows/20081209)
MIME-Version: 1.0
References: <bee.3c8df571.36ba445c@aol.com>
In-Reply-To: <bee.3c8df571.36ba445c@aol.com>
Content-Type: text/html; charset=ISO-8859-1
Content-Transfer-Encoding: 7bit

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Subject: Re: Ulrich et al. v. Riley (TTAB Cancellation No. 92050258)
From: "Gabe Reed" <gabereed@aol.com>
Date: Wed, 4 Feb 2009 02:07:14 +0000
To: "S. Martin Keleti" <keleti@manifesto.com>
X-Account-Key: account2
X-UIDL: sm_0002ABB0_724ecae7575e41428302f7f16bb02edd
X-Mozilla-Status: 0013
X-Mozilla-Status2: 00000000
Return-Path: <srs0=og6u1o=6h=aol.com=gabereed@srs.bis.na.blackberry.com>
Received: from k121.smtproutes.com [208.70.91.121] by mail.ewhost.com with SMTP; Tue, 3 Feb 2009 18:07:55 -0800
Received: from smtp02.bis.na.blackberry.com ([216.9.248.49]) by k121.smtproutes.com ([192.168.1.121]) with ESMTP via TCP; 04 Feb 2009 02:07:45 -0000
Received: from bxe189.bisx.prod.on.blackberry (bxe189.bisx.prod.on.blackberry [172.20.225.222]) by srs.bis.na.blackberry.com (8.13.7 TEAMON/8.13.7) with ESMTP id n1422e6N017369; Wed, 4 Feb 2009 02:08:24 GMT
X-Katharion-ID: 1233713266.11068.k121 (-1.2)
X-rim-org-msg-ref-id: 711035118
Message-ID: <711035118-1233713262-cardhu_decombobulator_blackberry.rim.net-1762837557-@bxe189.bisx.prod.on.blackberry>
Content-Transfer-Encoding: base64
Reply-To: gabereed@aol.com
X-Priority: Normal
Sensitivity: Normal
Importance: Normal
Content-Type: text/plain; charset="Windows-1252"
MIME-Version: 1.0
X-SmarterMail-TotalSpamWeight: 0 (IP Whitelisted)

Ok friday

-----Original Message-----

From: S. Martin Keleti

To: GabeReed@aol.com

Sent: Feb 3, 2009 7:13 PM

Subject: Re: Ulrich et al. v. Riley (TTAB Cancellation No. 92050258)

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keleti@manifesto.com <mailto:keleti@manifesto.com>

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-- S. Martin Keleti COHEN AND COHEN 8340 Melrose Avenue Los Angeles, California 90069-5420 323.655.4444 Telephone 323.655.3333 Facsimile keleti@manifesto.com <mailto:keleti@manifesto.com>

Sent via BlackBerry from T-Mobile

Subject: Re: Ulrich et al. v. Riley (TTAB Cancellation No. 92050258)
From: "Gabe Reed" <gabereed@aol.com>
Date: Mon, 9 Feb 2009 20:30:18 +0000
To: "S. Martin Keleti" <keleti@manifesto.com>
X-Account-Key: account2
X-UIDL: sm_0002B390_724ecae7575e41428302f7f16bb02edd
X-Mozilla-Status: 0011
X-Mozilla-Status2: 00400000
Return-Path: <srs0=exocmx=6m=aol.com=gabereed@srs.bis.na.blackberry.com>
Received: from k075.smtproutes.com [208.70.89.175] by mail.ewhost.com with SMTP; Mon, 9 Feb 2009 12:44:26 -0800
Received: from smtp08.bis.na.blackberry.com ([216.9.248.55]) by k075.smtproutes.com ([192.168.2.175]) with ESMTP via TCP; 09 Feb 2009 20:44:08 -0000
Received: from bxe189.bisx.prod.on.blackberry (bxe189.bisx.prod.on.blackberry [172.20.225.222]) by srs.bis.na.blackberry.com (8.13.7 TEAMON/8.13.7) with ESMTP id n19KIHU028285; Mon, 9 Feb 2009 20:31:32 GMT
X-Katharion-ID: 1234212250.5682.k075 (-1.2)
X-rim-org-msg-ref-id: 1467832421
Disposition-Notification-To: gabereed@aol.com
Message-ID: <1467832421-1234211448-cardhu_decombobulator_blackberry.rim.net-60555913-@bxe189.bisx.prod.on.blackberry>
Content-Transfer-Encoding: base64
Reply-To: gabereed@aol.com
X-Priority: Normal
Sensitivity: Normal
Importance: Normal
Content-Type: text/plain; charset="Windows-1252"
MIME-Version: 1.0
X-SmarterMail-TotalSpamWeight: 0 (IP Whitelisted)

Martin

I never heard from you on Friday. Can we schedule a call for this week?

Regards,
Gabe

-----Original Message-----

To: S. Martin Keleti
Sent: Feb 3, 2009 8:07 PM
Subject: Re: Ulrich et al. v. Riley (TTAB Cancellation No. 92050258)

Ok friday

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-- S. Martin Keleti COHEN AND COHEN 8340 Melrose Avenue Los Angeles, California 90069-5420 323.655.4444 Telephone 323.655.3333 Facsimile keleti@manifesto.com <<mailto:keleti@manifesto.com>>

Re: Ulrich et al. v. Riley (TTAB Cancellation No. 92050258)

Sent via BlackBerry from T-Mobile

Subject: Re: Ulrich et al. v. Riley (TTAB Cancellation No. 92050258)
From: "S. Martin Keleti" <keleti@manifesto.com>
Date: Fri, 13 Feb 2009 11:58:44 -0800
To: gabereed@aol.com
X-Mozilla-Status: 0001
X-Mozilla-Status2: 00800000
Message-ID: <4995D0F4.80109@manifesto.com>
User-Agent: Thunderbird 2.0.0.19 (Windows/20081209)
MIME-Version: 1.0
References: <711035118-1233713262-cardhu_decombobulator_blackberry.rim.net-1762837557-@bx189.bisx.prod.on.blackberry>
In-Reply-To: <711035118-1233713262-cardhu_decombobulator_blackberry.rim.net-1762837557-@bx189.bisx.prod.on.blackberry>
Content-Type: text/plain; charset=windows-1252; format=flowed
Content-Transfer-Encoding: 7bit

You didn't say when, you didn't call that day (or since). I'll be out the rest of this afternoon.

Some time next week? Suggest a day/time. After 10 a.m. PST usually works better for me.

Gabe Reed wrote:

Ok friday -----Original Message-----

From: S. Martin Keleti

To: GabeReed@aol.com

Sent: Feb 3, 2009 7:13 PM

Subject: Re: Ulrich et al. v. Riley (TTAB Cancellation No. 92050258)

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Sent via BlackBerry from T-Mobile

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Subject: Re: Ulrich et al. v. Riley (TTAB Cancellation No. 92050258)
From: "Gabe Reed" <gabereed@aol.com>
Date: Fri, 13 Feb 2009 20:05:01 +0000
To: "S. Martin Keleti" <keleti@manifesto.com>
X-Account-Key: account2
X-UIDL: sm_0002B8DB_724ecae7575e41428302f7f16bb02edd
X-Mozilla-Status: 0011
X-Mozilla-Status2: 00400000
Return-Path: <srs0=xdiivb=6q=aol.com=gabereed@srs.bis.na.blackberry.com>
Received: from k122.smtproutes.com [208.70.91.122] by mail.ewhost.com with SMTP; Fri, 13 Feb 2009 12:05:44 -0800
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Received: from bxe189.bisx.prod.on.blackberry (bxe189.bisx.prod.on.blackberry [172.20.225.222]) by srs.bis.na.blackberry.com (8.13.7 TEAMON/8.13.7) with ESMTP id n1DK5HF6031780; Fri, 13 Feb 2009 20:05:26 GMT
X-Katharion-ID: 1234555542.14485.k122 (-1.2)
X-rim-org-msg-ref-id: 2062328844
Disposition-Notification-To: gabereed@aol.com
Message-ID: <2062328844-1234555538-cardhu_decombobulator_blackberry.rim.net-1776168686-@bxe189.bisx.prod.on.blackberry>
Content-Transfer-Encoding: base64
Reply-To: gabereed@aol.com
X-Priority: Normal
Sensitivity: Normal
Importance: Normal
Content-Type: text/plain
MIME-Version: 1.0
X-SmarterMail-TotalSpamWeight: 0 (IP Whitelisted)

Let's do a call on monday?

-----Original Message-----

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To: gabereed@aol.com

Sent: Feb 13, 2009 1:58 PM

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90069-5420 323.655.4444 Telephone 323.655.3333 Facsimile keleti@manifesto.com
<<mailto:keleti@manifesto.com>>

Sent via BlackBerry from T-Mobile

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Subject: Re: Ulrich et al. v. Riley (TTAB Cancellation No. 92050258)
From: "Gabe Reed" <gabereed@aol.com>
Date: Fri, 13 Feb 2009 20:05:59 +0000
To: "S. Martin Keleti" <keleti@manifesto.com>
X-Account-Key: account2
X-UIDL: sm_0002B8DD_724ecae7575e41428302f7f16bb02edd
X-Mozilla-Status: 0013
X-Mozilla-Status2: 00800000
Return-Path: <srs0=xdiivb=6q=aol.com=gabereed@srs.bis.na.blackberry.com>
Received: from k123.smtproutes.com [208.70.91.123] by mail.ewhost.com with SMTP; Fri, 13 Feb 2009 12:06:43 -0800
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X-Katharion-ID: 1234555600.13010.k123 (-1.2)
X-rim-org-msg-ref-id: 1126336155
Disposition-Notification-To: gabereed@aol.com
Message-ID: <1126336155-1234555592-cardhu_decombobulator_blackberry.rim.net-1867083553-@bxe189.bisx.prod.on.blackberry>
Content-Transfer-Encoding: base64
Reply-To: gabereed@aol.com
X-Priority: Normal
References: <2062328844-1234555538-cardhu_blackberry.rim.net-copy_sent_folder-1835371929-@bxe189.bisx.prod.on.blackberry>
In-Reply-To: <2062328844-1234555538-cardhu_blackberry.rim.net-copy_sent_folder-1835371929-@bxe189.bisx.prod.on.blackberry>
Sensitivity: Normal
Importance: Normal
Content-Type: text/plain
MIME-Version: 1.0
X-SmarterMail-TotalSpamWeight: 0 (IP Whitelisted)

Sorry ... At noon pst on monday?
Sent via BlackBerry from T-Mobile

-----Original Message-----

From: "Gabe Reed" <gabereed@aol.com>

Date: Fri, 13 Feb 2009 20:05:01

To: S. Martin Keleti <keleti@manifesto.com>

Subject: Re: Ulrich et al. v. Riley (TTAB Cancellation No. 92050258)

Let's do a call on monday?

-----Original Message-----

From: S. Martin Keleti

To: gabereed@aol.com

Re: Ulrich et al. v. Riley (TTAB Cancellation No. 92050258)

Sent: Feb 13, 2009 1:58 PM
Subject: Re: Ulrich et al. v. Riley (TTAB Cancellation No. 92050258)

You didn't say when, you didn't call that day (or since). I'll be out the rest of this afternoon.

Some time next week? Suggest a day/time. After 10 a.m. PST usually works better for me.

Gabe Reed wrote:

Ok friday

-----Original Message-----

From: S. Martin Keleti

To: GabeReed@aol.com

Sent: Feb 3, 2009 7:13 PM

Subject: Re: Ulrich et al. v. Riley (TTAB Cancellation No. 92050258)

It's not my custom to disregard a tribunal's deadline. Your available options are tomorrow (February 4), Thursday (February 5) and Friday (February 6).

GabeReed@aol.com <<mailto:GabeReed@aol.com>> wrote:
Hi Martin

If you don't mind, lets do the conference on Monday February 9th.

Regards,
Gabe

In a message dated 2/3/2009 5:11:52 P.M. Central Standard Time, keleti@manifesto.com <<mailto:keleti@manifesto.com>> writes: Mr. Reed:

You should have received respondent's answer by now; in addition to serving you a copy by mail, I note that the document is available online on the ttabvue website.

You may recall that after the time to answer, the first deadline is that for a discovery conference (February 7, 2009). That date is this Saturday, so as a practical matter, the deadline is this Friday, February 6, 2009. If you desired a Board interlocutory attorney or administrative trademark judge to participate in the conference, the time in which to request one has expired (participation must be requested at least 10 days in advance).

Please let me know how I should construe your not scheduling a conference with me.

Very truly yours,

--

Re: Ulrich et al. v. Riley (TTAB Cancellation No. 92050258)

S. Martin Keleti
COHEN AND COHEN
8340 Melrose Avenue
Los Angeles, California 90069-5420
323.655.4444 Telephone
323.655.3333 Facsimile
keleti@manifesto.com <<mailto:keleti@manifesto.com>>

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-- S. Martin Keleti COHEN AND COHEN 8340 Melrose Avenue Los Angeles, California
90069-5420 323.655.4444 Telephone 323.655.3333 Facsimile keleti@manifesto.com
<<mailto:keleti@manifesto.com>>

Sent via BlackBerry from T-Mobile

--
S. Martin Keleti
COHEN AND COHEN
8340 Melrose Avenue
Los Angeles, California 90069-5420
323.655.4444 Telephone
323.655.3333 Facsimile
keleti@manifesto.com

Sent via BlackBerry from T-Mobile

Re: Ulrich et al. v. Riley (TTAB Cancellation No. 92050258)

Subject: Re: Ulrich et al. v. Riley (TTAB Cancellation No. 92050258)
From: "S. Martin Keleti" <keleti@manifesto.com>
Date: Fri, 13 Feb 2009 12:21:43 -0800
To: gabereed@aol.com
X-Mozilla-Status: 0001
X-Mozilla-Status2: 00800000
Message-ID: <4995D657.1040800@manifesto.com>
User-Agent: Thunderbird 2.0.0.19 (Windows/20081209)
MIME-Version: 1.0
References: <2062328844-1234555538-cardhu_blackberry.rim.net-copy_sent_folder-1835371929-@bxe189.bisx.prod.on.blackberry> <1126336155-1234555592-cardhu_decombobulator_blackberry.rim.net-1867083553-@bxe189.bisx.prod.on.blackberry>
In-Reply-To: <1126336155-1234555592-cardhu_decombobulator_blackberry.rim.net-1867083553-@bxe189.bisx.prod.on.blackberry>
Content-Type: text/html; charset=ISO-8859-1
Content-Transfer-Encoding: 7bit

Nope. Presidents' Day.

Gabe Reed wrote:

Sorry ... At noon pst on monday?
Sent via BlackBerry from T-Mobile

-----Original Message-----

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Sent via BlackBerry from T-Mobile

Re: Ulrich et al. v. Riley (TTAB Cancellation No. 92050258)

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323.655.4444 Telephone
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s.keleti@cohenandcohen.com

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PROOF OF SERVICE

State of California }
County of Los Angeles }

I, S. Martin Keleti, am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is: 8430 Melrose Avenue, Los Angeles, California 90069-5420.

On July 20, 2010 I served the foregoing **RESPONDENT'S REPLY TO PETITIONER'S RESPONSE TO ORDER TO SHOW CAUSE; DECLARATION OF S. MARTIN KELETI** on all interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

**Gabe Reed
The Crescent — 7th Floor
100 Crescent Court
Dallas, Texas 75201**

I am readily familiar with the business's practice for the collection and processing of correspondence for mailing with the United States Postal Service and the fact that the correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business. On this date, the above referenced correspondence was placed for deposit at Los Angeles, California and placed for collection and mailing following ordinary business practices.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 20, 2010.



S. MARTIN KELETI

CERTIFICATE OF MAILING

I hereby certify that this paper is being deposited with the United States Postal Service as Express Mail® addressed to United States Patent and Trademark Office, Trademark Trial and Appeal Board, Post Office Box 22313-1451, Arlington, Virginia 22313-1451.

Dated: July 20, 2010



S. MARTIN KELETI