

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

Faint

Mailed: August 23, 2010

Cancellation No. 92051116

Racer Sporting Goods Co.,  
Ltd.

v.

Parsons Officials Supplies,  
Inc.

**By the Trademark Trial and Appeal Board:**

Petitioner filed on June 24, 2010, a notice of ineffective service, and service by publication was made in the Official Gazette dated August 25, 2009. The Board, on October 10, 2009, granted the petition to cancel because respondent made no appearance, and respondent's registration was cancelled on October 27, 2009. This case now comes up on respondent's motion, filed June 24, 2010, for relief from final judgment. Petitioner has not responded to the motion.

In support of his motion, respondent argues that it did not know of the cancellation proceeding; that it first learned its registration had been cancelled while conducting a review of the PTO electronic database; that, upon realizing its registration had been cancelled, it promptly sought legal advice; and that its attorney filed a Petition to the Director on March 8, 2010; when the petition was denied, counsel filed the instant motion. Respondent argues that petitioner will not be prejudiced by the relief sought

because it knew of respondent's changed address but did not serve respondent at that address; that petitioner's application for the same mark is still pending; that respondent's failure to answer the petition to cancel was not willful, but based on its lack of knowledge that this proceeding existed; and that it has a meritorious defense as evidenced by statement that it has not discontinued use of its mark but, rather, the mark continues to serve as a source indicator for respondent.<sup>1</sup>

Fed. R. Civ. P. 60(b) provides for relief from judgment in specified instances. Any motion for such relief must be made within one year from the entry of judgment where the motion is brought pursuant to the first three grounds for relief (mistake, inadvertence, surprise, excusable neglect; newly discovered evidence; or fraud). Here, respondent's motion is timely, brought about eight months after entry of the default judgment.

Relief from a default judgment has been granted under Fed. R. Civ. P. 60(b)(1) where the party seeking such relief had no knowledge of the filing of the complaint. See 11 Charles A. Wright, Alan R. Miller & Mary Kay Kane, *Fed. Prac. & Proc. Civ. 2d* § 2858 (WESTLAW update 2010).

In this case, because respondent had no knowledge of the proceeding and acted quickly to seek relief,

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<sup>1</sup> The statements made in the motion are supported by an attached declaration. The sole ground of the petition to cancel is that respondent has abandoned use of his mark.

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respondent's motion for relief from final judgment is granted, and the default judgment entered on October 10, 2009 is hereby vacated. See also Trademark Rule 2.127(a).

Proceedings are resumed. The Commissioner's Office is to be notified that Registration No. 1326105 is to be returned to active status. Tamara A. Miller is recognized as counsel of record for respondent. The correspondence address for respondent is updated as follows:

Tamara A. Miller  
Leydig, Voit & Mayer Ltd.  
Two Prudential Plaza  
180 N. Steton Ave. Suite 4900  
Chicago, IL 60601

The parties are directed to the USPTO website at [www.uspto.gov](http://www.uspto.gov) where they may access status of Board proceedings, as well as access all filings, orders and correspondence made in Board cases, including the instant cancellation proceeding.

A copy of the petition to cancel may be viewed by respondent at: <http://ttabvue.uspto.gov/ttabvue/v?pno=92051116&pty=CAN&eno=1>, and respondent is allowed until **the date indicated below** in this order in which to file its answer to the complaint.

Discovery and trial dates are reset as indicated below:

Time to Answer	10/2/2010
Deadline for Discovery Conference	11/1/2010
Discovery Opens	11/1/2010
Initial Disclosures Due	12/1/2010
Expert Disclosures Due	3/31/2011
Discovery Closes	4/30/2011
Plaintiff's Pretrial Disclosures	6/14/2011

Plaintiff's 30-day Trial Period Ends	7/29/2011
Defendant's Pretrial Disclosures	8/13/2011
Defendant's 30-day Trial Period Ends	9/27/2011
Plaintiff's Rebuttal Disclosures	10/12/2011
Plaintiff's 15-day Rebuttal Period Ends	11/11/2011

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 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.

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