

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

MBA

Mailed: January 15, 2010

Cancellation No. 92051532

PictureCode, LLC

v.

Juan B. Melendez III

Michael B. Adlin, Interlocutory Attorney:

This order addresses petitioner's first amended petition for cancellation, filed January 11, 2010, and respondent's proposed post-registration amendment, filed October 1, 2009.

First Amended Petition for Cancellation

Petitioner's first amended petition for cancellation is noted. Respondent's answer thereto remains due in accordance with the Board' order of December 10, 2009.

Respondent's Proposed Post-Registration Amendment

On October 1, 2009, the same day petitioner filed its original petition for cancellation, respondent filed a proposed post-registration amendment to its Registration No. 3321797, without petitioner's consent.¹ By the proposed amendment, respondent seeks to amend the claimed dates of

¹ Petitioner's responses to the motion to amend, filed October 5 and November 19, 2009, and respondent's reply, filed December 3, 2009, are noted.

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first use anywhere and first use in commerce to August 12, 2003. While the Board generally defers consideration of post-registration amendments filed without a petitioner's consent, in this case, because respondent filed his proposed amendment on the same day as the original petition for cancellation, it is appropriate to consider the amendment now, despite it being without petitioner's consent. See generally, In re the First National Bank of Boston, 199 USPQ 296, 301 (TTAB 1978).

Respondent's proposed amendment is acceptable under Trademark Rule 2.173 and the required fee has been paid. Accordingly, the amendment is approved, and it will be forwarded to the Post Registration Branch of the Office for appropriate action in accordance with Section 7(e) of the Trademark Act.

Dates remain as set in the Board's order of December 10, 2009.
