

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

Baxley

Mailed: August 30, 2010

Cancellation No. 92051659

Nowlan Family Trust

v.

The Dille Family Trust

By the Trademark Trial and Appeal Board:

On July 21, 2010, the Board issued an order requiring respondent to show cause why its failure to respond to the Board's June 9, 2010 order, wherein its attorney's request to withdraw from this case, should not result in entry of judgment against respondent based on respondent's apparent loss of interest in this case. After respondent filed a response and its new attorney entered an appearance on August 16, 2010, the Board, in an August 19, 2010 order, set aside the order to show cause and reset respondent's time in which to respond to the motion to compel discovery that petitioner filed on June 4, 2010. On August 25, 2010, petitioner filed a combined brief in opposition to respondent's response to the order to show cause and request for reconsideration of the August 19, 2010 order.

The Board has reviewed petitioner's submission and is not persuaded thereby that that the August 19, 2010 order

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was in error.¹ See Trademark Rule 2.127(b); TBMP Section 518 (2d ed. rev. 2004). The showing necessary to set aside an order to show cause based on lack interest in a proceeding is extremely low. So long as a party to whom an order to show cause based on apparent loss of interest is issued responds to that order with an indication that it has not lost interest the case, the Board will set aside such an order to show cause.² See TBMP Section 510.03(b). See also Trademark Rule 2.128(a)(3); TBMP Section 312.02 (Board policy dictates that cases be decided on the merits where

¹ An order to show cause is essentially an *ex parte* matter between the Board and a party to an *inter partes* proceeding that does not contemplate full briefing by the parties. Compare TBMP Sections 312.01 and 502.02(b) (2d ed. rev. 2004). Although the Board generally will consider a brief in opposition to a response to an order to show cause, such briefs are rarely persuasive.

In addition, the Board does not automatically issue an order to show cause after a party whose attorney has withdrawn from a case fails to respond to an order in which that party is allowed time in which to appoint new counsel or state that it intends to represent itself. See TBMP Section 510.03(b). Indeed, where the attorney of a defendant who has filed an answer withdraws from a case and the defendant fails to appoint a new attorney, the Board often presumes that the defendant will represent itself and resumes the case.

² To the extent that the parties, in the filings in connection with the order to show cause, argue the merits of this case, those arguments are premature. Likewise, to the extent that petitioner, in its combined brief in opposition and request for reconsideration, argues the merits of its motion to compel, those arguments are inappropriate. See Trademark Rule 2.127(a).

Moreover, the fraud claim set forth in the petition to cancel is insufficient. In particular, the allegations that respondent committed fraud in renewing involved Registration No. 714184 are made "[u]pon information and belief" with no allegation of specific facts upon which the belief is reasonably based. *In re Bose Corp.*, 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009); *Asian and Western Classics B.V. v. Selkow*, 92 USPQ2d 1478 (TTAB 2009). Notwithstanding the foregoing, the Board will not entertain a motion for leave to file an amended petition to cancel during the

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possible). Because respondent made such an indication in in response to July 21, 2010 order to show cause, the Board remains of the opinion that such order was properly set aside.

In view thereof, petitioner's request for reconsideration of the August 19, 2010 order is denied. The August 19, 2010 order stands. In accordance with that order, respondent's brief in response to petitioner's motion to compel is due by September 8, 2010. Petitioner's reply brief is due in accordance with Trademark Rules 2.119(c) and 2.127(a).

pendency of petitioner's motion to compel. See Trademark Rule 2.120(e)(2); TBMP Section 523.01.