

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

EJW

Mailed: May 27, 2011

Cancellation No. 92051821

Zoba International Corp. dba
CD Digital Card

v.

DVD Format/Logo Licensing
Corporation

ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:

Partial Motion to Dismiss or for Partial Summary Judgment

The Board notes that on May 13, 2011, respondent filed a motion to dismiss, or in the alternative, a motion for partial summary judgment on petitioner's fraud claim as set forth in its amended petition to cancel. On review, it is also noted that respondent has submitted materials outside of petitioner's amended pleading. To the extent said motion seeks summary judgment on the pleaded ground of fraud, and because there is no allegation in the motion that respondent has served its initial disclosures, the partial motion for summary judgment is denied as premature. See Trademark Rule 2.127(e)(1), 37 C.F.R. § 2.127(e)(1). See also *Qualcomm Inc. v. FLO Corp.*, 93 USPQ2d 1768, 1769 (TTAB 2010); and *Compagnie Gervais Danone v. Precision Formulations, LLC*, 89

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USPQ2d 1251, 1255 (TTAB 2009) ("In inter partes proceedings commenced after November 1, 2007, a party may not file a motion for summary judgment under Trademark Rule 2.127(e)(1) until the party has made its initial disclosures, except for a motion asserting claim or issue preclusion or lack of jurisdiction by the Board"). Accordingly, petitioner must file its response to respondent's partial motion to dismiss in accordance with Trademark Rule 2.127(a)(1).

Party Plaintiff

Respondent asserts in the subject motion that petitioner, identified in the amended petition to cancel to be a California corporation, is dissolved. In support of its allegation, respondent has submitted the declaration of its counsel along with a non-certified printout of information from the California Secretary of State indicating that Zoba International Corp. is dissolved.

In view thereof, petitioner is allowed until **THIRTY DAYS** from the mailing date of this order to submit to the Board information regarding the current status of the corporate entity currently identified as petitioner in this proceeding and, if petitioner has been dissolved, when such dissolution occurred, and which person(s) and/or entity(ies) is the successor-in-interest to the party plaintiff identified in ¶2 of the amended petition to cancel, failing which the Board may issue an order to show cause why judgment should not be

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entered against petitioner based on its apparent loss of interest in this case. See TBMP § 512.01 (3d ed. 2011).

Proceeding Suspended

Respondent requests that the Board not suspend this proceeding, and that this proceeding should move forward to allow the parties to conduct their mandatory discovery conference with respect to petitioner's abandonment claim. Respondent also requests the Board's participation in the conference. Inasmuch as respondent's motion is potentially dispositive of petitioner's fraud claim, respondent's motion not to suspend this proceeding is denied. See Trademark Rule 2.127(d); and TBMP § 510.02(a) (3d ed. 2011).

Accordingly, this proceeding is **SUSPENDED** pending disposition of respondent's motion to dismiss petitioner's claim of fraud. Any paper filed during the pendency of this motion which is not relevant thereto will be given no consideration. See Trademark Rule 2.127(d).

Additionally, once this proceeding is resumed and trial dates are reset, respondent should renew its request for Board participation in the discovery conference.

