

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

Mailed: January 21, 2011

Cancellation No. 92052327

Elvis Presley Enterprises,  
Inc.

v.

King of Rock 'N' Roll Music,  
Inc.

**M. Catherine Faint,  
Interlocutory Attorney:**

In response to the Board's order of January 4, 2011 respondent filed an "objection," which the Board construes as a request for reconsideration of the Board's January 4 order. Petitioner should not file a response to the request for reconsideration, as the Board will now address it on the merits.

By way of background the Board notes that petitioner filed its motion for summary judgment on the ground of abandonment on September 10, 2010.<sup>1</sup> On September 30, 2010, the Board granted the parties' stipulation extending respondent's time to file a response brief to the motion for summary judgment until November 15, 2010. Respondent's response in opposition to the motion for summary judgment and cross-motion for summary judgment on the same ground were filed November 11, 2010. On

December 1, 2010, the parties filed a stipulation extending the deadline for petitioner's reply in support of its motion for summary judgment; and extending the time for respondent to file its reply brief in support of its cross-motion for summary judgment to 22 days after petitioner filed its response in opposition to respondent's cross-motion for summary judgment. On December 15, 2010 petitioner filed its combined reply brief in support of its motion for summary judgment and response in opposition to respondent's cross-motion for summary judgment. On January 4, 2011 the Board issued an order denying the stipulation, noting that under Trademark Rule 2.127(e)(1) the time for extending a reply brief, even on motions for summary judgment will not be extended. In that order, the Board further granted the motion to the extent that it was extending the time for petitioner to file its response to the cross-motion for summary judgment.<sup>2</sup>

A motion for reconsideration of a decision on a prior motion under Trademark Rule 2.127(b) is limited to a demonstration that based on the facts before it and applicable law, the Board's ruling was in error and requires appropriate change. TBMP § 518 (2d ed. rev. 2004).

---

<sup>1</sup> Indeed, abandonment is the sole pleaded ground in this cancellation proceeding.

<sup>2</sup> Petitioner's response to the cross-motion for summary judgment was due December 11, 2010, and would have been considered timely if filed by December 16, 2010. Petitioner timely filed the combined reply brief and response to the cross-motion on December 15, 2010. Trademark Rule 2.119(c). The parties' stipulation appeared to seek an extension to December 15, 2010, which would have been timely filed by December 20, 2010.

Respondent argues that because petitioner filed on December 15, 2010 its combined reply brief in support of its motion for summary judgment and response in opposition to respondent's cross-motion for summary judgment, it would be highly prejudicial for the Board to consider that portion of petitioner's response which was a "reply" without also allowing respondent to file a reply brief.

Where a reply brief in support of a motion for summary judgment, and a response brief in opposition to a cross-motion for summary judgment involve the same issues of law and fact, the Board may treat them as a combined response. *See, e.g., Cooper Technologies Co. v. Denier Elec. Co.*, 89 USPQ2d 1478, 1479 (TTAB 2008); *Fram Trak Industries Inc. v. Wiretracks, LLC*, 77 USPQ2d 2000, 2001 n.3 (TTAB 2006). Here both the motion and cross-motion for summary judgment involve the pleaded ground of abandonment, and thus necessarily the same issues of law and fact. Therefore, the Board may consider the combined response and reply brief as there would be no practical way to separate the issues.

As petitioner's response to respondent's cross-motion was filed December 15, 2010, respondent's reply brief was due January 4, 2011, and was timely filed on that date.<sup>3</sup>

Accordingly, the motion for reconsideration is denied as moot since respondent's reply brief was timely filed. The parties may not file any further papers during the pendency of

---

<sup>3</sup> While the time for filing a reply brief may not be extended, where service of papers is made via mail, an additional five days is provided under Trademark Rule 2.119(c).

the motion and cross-motion for summary judgment and the motion to amend the answer, except that respondent's reply brief in support of its motion to amend is due January 25, 2011.<sup>4</sup>

\*\*\*

---

<sup>4</sup> The Board expects the parties, particularly when represented by counsel, to be familiar with the Board's rules. The rules may be found at: <http://www.uspto.gov/trademarks/law/index.jsp>.