

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

MBA

Mailed: May 3, 2011

Cancellation No. 92053424

ProThera, Inc.

v.

World Nutrition, Inc.

Michael B. Adlin, Interlocutory Attorney:

On April 27, 2011, at respondent's request, the Board participated in the parties' telephonic discovery conference mandated under Fed. R. Civ. P. 26(f) and Trademark Rules 2.120(a)(1) and (a)(2). Brian Geoghegan appeared on petitioner's behalf, Laila S. Wolfgram and Karen L. Liepmann appeared on respondent's behalf and the interlocutory attorney responsible for this proceeding participated on the Board's behalf.

During the conference, the parties indicated that they are unaware of any related proceedings, marks or third party disputes, with the exception of respondent's related Registration No. 2934292, which petitioner has not challenged and does not intend to challenge. The parties have not initiated settlement discussions, but intend to do so in the near future, and both expressed interest in settlement. In fact, petitioner suggested that proceedings

be suspended for the purpose of settlement discussions. Respondent declined to consent to suspension at this time, however, indicating that in December 2010 it requested information from petitioner in order to evaluate the possibility of settlement, but petitioner has not yet provided the requested information. At this point, respondent intends to pursue formal means of obtaining the information it seeks, but may be amenable to suspension for settlement discussions in the future. The Board strongly encouraged the parties to pursue settlement. The parties agreed to accept service of papers by e-mail under Trademark Rule 2.119(b)(6).

The parties discussed the pleadings in this case. Petitioner confirmed that its pleaded ground for cancellation is priority and likelihood of confusion only.¹ The Board pointed out that because petitioner relies on a single mark, the parties' goods appear to be similar or identical (which neither party disputed), petitioner has only one claim, and the relevant facts appear to be quite limited, this is an extraordinarily uncomplicated, run-of-the-mill case. Accordingly, the Board strongly suggested

¹ As respondent was informed during the teleconference, the applicable "test is likelihood of confusion not actual confusion ... It is unnecessary to show actual confusion in establishing likelihood of confusion." Weiss Associates, Inc. v. HRL Associates, Inc., 902 F.2d 1546, 14 USPQ2d 1840, 1842-43 (Fed. Cir. 1990).

that this case appears particularly well-suited for accelerated case resolution ("ACR") or other methods to increase the efficiency of this proceeding. The parties were encouraged to consider this possibility throughout the case, and both agreed to do so. The Board's ACR procedures, which are extremely flexible, are addressed here:

<http://www.uspto.gov/trademarks/process/appeal/acrognoticerule.pdf>

[http://www.uspto.gov/trademarks/process/appeal/accelerated case resolution acr faq.doc](http://www.uspto.gov/trademarks/process/appeal/accelerated%20case%20resolution%20acr%20faq.doc)

[http://www.uspto.gov/trademarks/process/appeal/acrcase list.doc](http://www.uspto.gov/trademarks/process/appeal/acrcase%20list.doc)

The Board also discussed the parties' option to stipulate to limits on discovery, abbreviated procedures for submission of evidence and other ways to expedite resolution of this case. See, Target Brands Inc. v. Hughes, 85 USPQ2d 1676 (TTAB 2007). While the parties expressed great interest in limiting discovery, neither was willing to commit to limitations during the conference. Similarly, the Board discussed the possibility of the parties making greater reciprocal disclosures than required by Fed. R. Civ. P. 26(a)(1), in lieu of formal discovery, especially given respondent's outstanding demands for information from petitioner so that it may evaluate settlement. See, "Miscellaneous Changes to Trademark Trial and Appeal Board Rules," 71 Fed. Reg. 2498 (January 17, 2006). The parties also indicated a willingness to consider this option, but again neither was willing to stipulate to pursuing this

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option during the conference. The parties should seriously consider the cost and time savings these options would yield, without impacting either party's rights.

The Board's standard protective order, made applicable herein by operation of Trademark Rule 2.116(g), is available here:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>

The parties and their counsel are encouraged to acknowledge their obligations under the protective order in writing, and may utilize the following form:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/ackagrmnt.htm>

The parties were reminded that neither discovery requests nor motions for summary judgment may be served until after initial disclosures are made. For the time being, disclosure, discovery, trial and other dates remain as set in the Board's order of January 28, 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 Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.
