

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

Mailed: March 24, 2011

Cancellation No. 92053599

Philotic, Inc.

v.

Cause TV, Inc.

**Robert H. Coggins,  
Interlocutory Attorney:**

This case now comes up on respondent's motion (filed March 21, 2011) to suspend proceedings pending final disposition of a civil action between the parties. Before determining the motion, the Board addresses two procedural issues.

Appearance of Counsel

Representation by counsel for respondent has been established by the filing of an answer and the concurrent motion to suspend. See TBMP §§ 114.03 and 117.03 (2d ed. rev. 2004). Accordingly, respondent's correspondence address has been updated.

Proof of Service

The petition for cancellation in this proceeding was filed on February 8, 2011, and included proof of service

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not on respondent itself but on counsel for respondent who prosecuted the underlying application which matured into the subject registration. On February 15, 2011, petitioner filed a corrected certificate of service showing proof of service of the petition on respondent itself as of February 9, 2011.

In a cancellation action, service is to be made on a respondent directly, and not on an attorney who may have been previously authorized to act on behalf of respondent during prosecution of its application prior to the date of registration of the mark. *Chocoladefabriken Lindt & Sprungli AG v. Karlo Flores*, 91 USPQ2d 1698, 1700 at fn.6 (TTAB 2009). Petitioner appears to have recognized this one day after filing the petition and immediately corrected its mistake.

Inasmuch as petitioner made service upon respondent's counsel at the time of filing the petition, petitioner moved promptly to cure the technical deficiency of service, counsel for respondent filed a timely answer concurrently with the motion to suspend, and it is clear that respondent will be represented by counsel in this proceeding, the Board need not accord a new filing date to the petition or give further consideration to petitioner's amended proof of service. *See The Equine Touch Foundation, Inc. v.*

*Equinology, Inc.*, 91 USPQ2d 1943 (TTAB 2009) (Board accepted as sufficient service to commence a cancellation proceeding, service on respondent's counsel rather than, as required, on respondent itself).

Motion to Suspend

The Board exercises its discretion to determine the motion before the expiration of petitioner's time for filing a brief in opposition thereto.

In support of its motion, respondent attached a copy of the complaint from the United States District Court civil action on which respondent bases its motion to suspend.<sup>1</sup>

It is the policy of the Board to suspend proceedings when the parties are involved in a civil action which may be dispositive of or have a bearing on the Board case. See Trademark Rule 2.117(a).

The Board has reviewed the complaint in the civil action and has determined that the civil action may have a bearing on the rights of the parties in the cancellation proceeding before the Board. Accordingly, respondent's

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<sup>1</sup> Civil Action No. 11-CV-1917-SAS, styled *Cause TV, Inc. v. Philotic, Inc.*, filed March 18, 2011, in the United States District Court for the Southern District of New York.

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motion is granted as well-taken, and proceedings are suspended pending final disposition of the civil action.

Within twenty days after the final determination of the civil action, respondent shall so notify the Board so that this case may be called up for any appropriate action (which may include resetting the deadline for the mandatory discovery conference).

During the suspension period the Board must be notified of any address changes for the parties or their attorneys.