

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

am

Mailed: August 16, 2011

Cancellation No. 92053769

David M. Morrow and The  
Morrow Institute Medical  
Group, Inc.

v.

Jane Wan Chou dba Ideal  
Skin, Inc.

**Elizabeth A. Dunn, Attorney (571-272-4267):**

Respondent's answer to the petition for cancellation dated July 25, 2011 is noted and made of record.

On July 25, 2011 respondent, who is represented by counsel, also filed a document titled "Counter Claim for Cancellation No.92953768" in which respondent cites petitioner's pending Sec. 1(b) application, and seeks to enjoin petitioner's use and recover damages and the costs of this action. Cancellation is only available for a registration, so there can be no counterclaim against a pending application.<sup>1</sup> Further, the Board is an

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<sup>1</sup> Claims against a pending application can only be brought in an opposition to that application.

administrative tribunal with jurisdiction limited to the issue of registrability. The Board has no power to enjoin use of a trademark or to award damages. Finally, Trademark Rule 2.127(f) specifies that "The Board will not ... award attorneys' fees or other expenses to any party."

Accordingly, no further consideration will be given to respondent's "counterclaim."

Respondent is advised to review the Trademark Act, the Trademark Rules, and the Trademark Trial and Appeal Board Manual of Procedure (TBMP) (3rd ed. 2011), all of which are available at the USPTO website [www.uspto.gov](http://www.uspto.gov). Strict compliance with the Trademark Rules of Practice and, where applicable, the Federal Rules of Civil Procedure, is expected of all parties before the Board. *McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, 1212 (TTAB 2006).

Because respondent's "counterclaim" created uncertainty as to whether the pleadings were closed, the Board resets dates below.

	9/11/11
Deadline for Discovery Conference	
Discovery Opens	9/11/11
Initial Disclosures Due	10/11/11
Expert Disclosures Due	2/8/12
Discovery Closes	3/9/12
Plaintiff's Pretrial Disclosures	4/23/12
Plaintiff's 30-day Trial Period Ends	6/7/12
Defendant's Pretrial Disclosures	6/22/12
Defendant's 30-day Trial Period	8/6/12

Ends

Plaintiff's Rebuttal Disclosures

**8/21/12**

Plaintiff's 15-day Rebuttal Period

**9/20/12**

Ends

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.

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