

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

MBA

Mailed: February 8, 2012

Cancellation No. 92053802

Education Resources, LLC

v.

Patricia Green Budwig

Michael B. Adlin, Interlocutory Attorney:

On February 3, 2012, respondent filed: (1) a motion to amend her involved Registration No. 2147129, without petitioner's consent, and without the required drawing, specimen, fee and declaration;¹ and (2) initial disclosures and responses to petitioner's interrogatories, both of which were apparently served on petitioner.

Initial Disclosures and Interrogatory Responses

Respondent should be aware that initial disclosures, and requests for discovery, responses thereto, and materials or depositions obtained through the discovery process should not be filed with the Board except when submitted: (1) with

¹ While it appears that respondent paid the fee and filed the required drawing, specimen and declaration when she originally filed the proposed amendments with the Office's Post Registration section, it also appears that the fee was refunded. In the event respondent's proposed amendment is reconsidered later in this case pursuant to this order, respondent must submit the declaration, specimen, drawing and fee with the Board. See Trademark Rules 2.6, 2.133 and 2.173.

a motion relating to discovery; (2) in support of or response to a motion for summary judgment; (3) under a notice of reliance during a party's testimony period; (4) as exhibits to a testimony deposition; or (5) in support of an objection to proffered evidence on the ground that the evidence should have been, but was not, provided in response to a request for discovery. See Trademark Rule 2.120(j)(8). Accordingly, the Board will give no further consideration to respondent's initial disclosures or discovery responses.

Motion to Amend Registration

Respondent seeks to amend the registration by: (1) removing from the word portion of the mark the space between the words "star" and "shine;" and (2) deleting the word "secondary" from the identification of services. However, consideration of an amendment filed without the explicit consent of all opposing parties will generally be deferred until final decision. Trademark Rule 2.133(a); Drive Trademark Holdings LP v. Inofin, 83 USPQ2d 1433, 1435-36 (TTAB 2007); TBMP § 514.03 (3d ed. 2011). Here, because petitioner does not consent to the proposed amendments, consideration thereof is hereby **DEFERRED** until final decision. Prior to the final decision, assuming respondent still seeks to have the amendment(s) entered, she must comply with all requirements applicable to amendments to registrations, including paying the required fee and filing the required drawing, specimen and

declaration. Furthermore, while the proposed amendment to the mark would not constitute a "material alteration" thereof, the proposed amendment to the description of services would be unacceptable. Indeed, pursuant to Trademark Rule 2.173(b), 37 C.F.R. § 2.173(b), a registrant may "restrict" the identification of goods and/or services. In this case, however, removing the term "secondary" would broaden the identification of services and is therefore unacceptable. As a result, the motion to amend the identification of services, even if petitioner consented thereto, would be denied.

Discovery remains closed and trial dates remain as set in the Board's order of November 4, 2011.
