

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

MBA

Mailed: May 23, 2011

Cancellation No. 92053802

Education Resources, LLC

v.

Patricia Green Budwig

Michael B. Adlin, Interlocutory Attorney:

On May 23, 2011, 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). Sylvia Mulholland appeared on petitioner's behalf, respondent appeared pro se and the interlocutory attorney responsible for this proceeding participated on the Board's behalf.

Respondent indicated that for the time being she will continue to represent herself in this proceeding. The Board advised respondent that it is generally recommended that parties retain experienced trademark practitioners to represent them in Board proceedings.¹ The Board also indicated that respondent would be expected and required to comply with all applicable rules and procedures, whether or

¹ Information for parties representing themselves pro se included at the end of this order.

not she retains counsel, including those relating to service of papers, as set forth in 37 C.F.R. § 2.119. With respect to service, the parties agreed to accept service of papers by e-mail under Trademark Rule 2.119(b)(6).

The parties indicated that while they have had very preliminary contact, they have not had substantive settlement discussions. The Board strongly suggested that the parties would likely benefit by at least discussing the possibility of settlement, and pointed out that in cases, such as this one, where a plaintiff's pending application has been refused based on a defendant's registration, the defendant's consent to the plaintiff's registration is often sufficient to lead to registration of plaintiff's mark and to resolution of the Board proceeding. The parties indicated that they plan to discuss settlement in the near future. The parties are not aware of any related proceedings, marks or third party disputes.

The parties discussed the pleadings, including petitioner's sole claim of abandonment. However, as explained during the teleconference, petitioner's abandonment claim is insufficiently pled, including because petitioner fails to allege that respondent has no intent to resume use of her involved mark. 15 U.S.C. § 1127; Otto International Inc. v. Otto Kern GmbH, 83 USPQ2d 1861, 1863 (TTAB 2007). Accordingly, petitioner is allowed until

THIRTY DAYS from the mailing date of this order to, if warranted, file an amended petition for cancellation which sufficiently pleads abandonment, failing which the original petition will be dismissed with prejudice. Respondent is allowed until **THIRTY DAYS** from service of any amended petition for cancellation to answer or otherwise move with respect thereto. The Board informed the parties that the materials attached to respondent's pleading are not evidence and will be given no consideration. To be considered at final decision, any evidence must be properly and timely submitted during a party's testimony period.

The Board noted that this case is exceedingly simple, comprising a single involved registration in a single class, and a single ground for cancellation, i.e. abandonment. Given the uncomplicated nature of this proceeding and the presumably limited facts at issue, the Board informed the parties of their 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). The Board also 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. See, Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 71 Fed. Reg. 2498 (January 17, 2006). In fact, it

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may be that by simply providing evidence acceptable to petitioner of its continued use of its involved mark, and its intention to continue use, respondent may be able to persuade petitioner to resolve this case, or, at the very least, limit the scope of discovery petitioner seeks.

The Board also indicated that this case may be appropriate for Accelerated Case Resolution ("ACR"), described 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 parties are strongly encouraged to consider this possibility.

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

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

The parties 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. The deadline for initial disclosures, and remaining deadlines, are reset as

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indicated below because of the anticipated filing of petitioner's amended petition for cancellation and respondent's answer thereto:

Initial Disclosures Due	July 29, 2011
Expert Disclosures Due	November 26, 2011
Discovery Closes	December 26, 2011
Plaintiff's Pretrial Disclosures	February 9, 2012
Plaintiff's 30-day Trial Period Ends	March 25, 2012
Defendant's Pretrial Disclosures	April 9, 2012
Defendant's 30-day Trial Period Ends	May 24, 2012
Plaintiff's Rebuttal Disclosures	June 8, 2012
Plaintiff's 15-day Rebuttal Period Ends	July 8, 2012

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 Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

Pro Se Information

Respondent is reminded that she will be expected to comply with all applicable rules and Board practices during the remainder of this case. The Trademark Rules of

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Practice, other federal regulations governing practice before the Patent and Trademark Office, and many of the Federal Rules of Civil Procedure govern the conduct of this cancellation proceeding. Respondent should note that Patent and Trademark Rule 10.14 permits any person or legal entity to represent itself in a Board proceeding, though it is generally advisable for those unfamiliar with the applicable rules to secure the services of an attorney familiar with such matters.

If respondent does not retain counsel, then she will have to familiarize herself with the rules governing this proceeding. The Trademark Rules are codified in part two of Title 37 of the Code of Federal Regulations (also referred to as the CFR). The CFR and the Federal Rules of Civil Procedure are likely to be found at most law libraries, and may be available at some public libraries. Finally, the Board's manual of procedure will be helpful.

On the World Wide Web, respondent may access most of these materials by logging onto <http://www.uspto.gov/> and making the connection to trademark materials.

Respondent must pay particular attention to Trademark Rule 2.119. That rule requires a party filing any paper with the Board during the course of a proceeding to serve a copy on its adversary, unless the adversary is represented by counsel, in which case, the copy must be served on the

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adversary's counsel. The party filing the paper must include "proof of service" of the copy. "Proof of service" usually consists of a signed, dated statement attesting to the following matters: (1) the nature of the paper being served; (2) the method of service (e.g., e-mail, first class mail); (3) the person being served and the address used to effect service; and (4) the date of service. Also, respondent should note that any paper she is required to file herein must be received by the Patent and Trademark Office by the due date, unless one of the filing procedures set forth in Trademark Rules 2.197 or 2.198 is utilized. These rules are in part two of Title 37 of the previously discussed Code of Federal Regulations.

Files of TTAB proceedings can now be examined using TTABVue, accessible at <http://ttabvue.uspto.gov/ttabvue/>. After entering the 8-digit proceeding number, click on any entry in the prosecution history to view that paper in PDF format.

The third edition of the Trademark Trial and Appeal Board Manual of Procedure (TBMP) has been posted on the USPTO web site at:
http://www.uspto.gov/trademarks/process/appeal/Preface_TBMP.jsp.
