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

RA

Mailed: August 30, 2011

Cancellation No. 92053945

Darlington Apple
Festival, Inc.

v.

Stephen Smith

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

On August 4, 2011, respondent's attorneys filed a request to withdraw as counsel of record in this case.[1] The request

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[1] On the same day, respondent, acting pro se, filed an ESTTA consent motion to extend, which was automatically granted, and then, following petitioner's objection, a withdrawal of the motion. In view of this, no further action will be taken.

However, respondent is advised that Fed. R. Civ. P. 11 certification standards apply to parties as well as attorneys. *See Business Guides, Inc. v. Chromatic Communications Enterprises, Inc.*, 498 U.S. 533, 547, 111 S.Ct. 922, 112 L.Ed.2d 1140 (1991) and *Central Manufacturing Inc. v. Third Millennium Technology Inc.*, 61 USPQ2d 1210, 1213 (TTAB 2001)(authority to sanction pro se party "is manifestly clear.").

Fed. R. Civ. P. 11(b) states:
By presenting to the court a pleading, written motion, or other paper — whether by signing, filing, submitting, or later advocating it — an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

to withdraw as counsel is in compliance with the requirements of Trademark Rule 2.19(b) and Patent and Trademark Rule 10.40, and is accordingly granted. The law firm of Raj Abhyanker, P.C. no longer represents respondent in this proceeding.

In view of the withdrawal of respondent's counsel, and in accordance with standard Board practice, proceedings herein are suspended, and respondent is allowed until **thirty days** from the mailing date of this order to appoint new counsel, or to file a paper stating that respondent chooses to represent itself. If respondent files no response, the Board may issue an order to show cause why default judgment should not be entered against respondent based on respondent's apparent loss of interest in the case.

The parties will be notified by the Board when proceedings are resumed, and dates will be rescheduled at the appropriate time. Respondent is advised that its answer was filed June 7, 2011. If proceedings resume, the Board will reset the deadline for initial disclosures.

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(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

Accordingly, any subsequent filing by respondent with a factual misrepresentation, such as an allegation that consent was given, may be subject to sanctions.

A copy of this order has been sent to all persons listed below.

cc:

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