

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

MBA

Mailed: October 4, 2011

Cancellation No. 92054263

TENSproducts, Inc.

v.

Current Solutions, LLC d/b/a  
Koalaty Products, Inc.

**Michael B. Adlin, Interlocutory Attorney:**

Respondent's motion for a more definite statement, filed August 24, 2011, is hereby **GRANTED IN PART** as conceded, because petitioner failed to respond thereto. Trademark Rule 2.127(a). Accordingly, pro se petitioner<sup>1</sup> is allowed until **THIRTY DAYS** from the mailing date of this order to file and serve an amended petition for cancellation which clearly sets forth petitioner's factual allegations, the source of its belief that it would be damaged by the continued registration of respondent's mark and any and all grounds for cancellation.

While it appears that petitioner may have intended to allege prior use of PUT THE INTENSITY BACK IN YOUR LIFE for

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<sup>1</sup> Information for pro se parties is included at the end of this order.

t-shirts, and that use of respondent's mark for electrical nerve stimulation units is likely to cause confusion with petitioner's alleged mark, or falsely suggest a connection with petitioner, this is not sufficiently clear from petitioner's pleading. Petitioner should specifically set forth any mark(s) for which it claims prior use, the goods and/or services in connection with which this mark(s) is used and the grounds for cancellation, such as likelihood of confusion. In the event petitioner intended to plead false suggestion of a connection, or any other ground, it should allege each of the elements of its claim(s). See, *Petróleos Mexicanos v. Intermix SA*, 97 USPQ2d 1403, 1405 (TTAB 2010) (false suggestion). In the event petitioner intended to plead nonuse, because respondent's use of its mark is alleged to be unlawful, petitioner does not necessarily need at this time to set forth all facts supporting its allegation that respondent's use is unlawful, but petitioner should carefully review Board precedent on this topic, and must state the claim clearly and specifically. See, generally, *General Mills Inc. v. Health Valley Foods*, 24 USPQ2d 1270, 1273 (TTAB 1992); *Santinine Societa v. P.A.B. Produits*, 209 USPQ 958, 964 (TTAB 1981).

The amended petition for cancellation shall also otherwise comply with Trademark Board Manual of Procedure

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("TBMP") §§ 309.02 and 309.03 (3d ed. rev. 2011). The TBMP may be accessed here:

[http://www.uspto.gov/trademarks/process/appeal/Preface\\_TBMP.jsp](http://www.uspto.gov/trademarks/process/appeal/Preface_TBMP.jsp)

Respondent's motion to strike is **DENIED** because petitioner need not introduce evidence at the pleading stage.

In the event petitioner fails to file an amended petition for cancellation as set forth herein, its current, original petition for cancellation may be stricken. TBMP § 505.03. In the event petitioner files an amended petition, respondent is allowed until **THIRTY DAYS** from the service thereof to file its answer thereto. All remaining dates are reset as follows:

Deadline for Discovery Conference	<b>December 14, 2011</b>
Discovery Opens	<b>December 14, 2011</b>
Initial Disclosures Due	<b>January 13, 2012</b>
Expert Disclosures Due	<b>May 12, 2012</b>
Discovery Closes	<b>June 11, 2012</b>
Plaintiff's Pretrial Disclosures	<b>July 26, 2012</b>
Plaintiff's 30-day Trial Period Ends	<b>September 9, 2012</b>
Defendant's Pretrial Disclosures	<b>September 24, 2012</b>
Defendant's 30-day Trial Period Ends	<b>November 8, 2012</b>
Plaintiff's Rebuttal Disclosures	<b>November 23, 2012</b>
Plaintiff's 15-day Rebuttal Period Ends	<b>December 23, 2012</b>

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

Petitioner is reminded that it will be expected to comply with all applicable rules and Board practices during the remainder of this case. The Trademark Rules of 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. The parties 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 petitioner does not retain counsel, then it will have to familiarize itself 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

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

The parties 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 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, the parties should note that any paper they are 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.

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Files of TTAB proceedings can now be examined using TTABVue, accessible at <http://ttabvue.uspto.gov>. 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 (2011) 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](http://www.uspto.gov/trademarks/process/appeal/Preface_TBMP.jsp)

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