

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: June 16, 2016

Cancellation No. 92054496

BSN Sports, LLC. (by substitution)

v.

Pass The Roc Athletics, Inc.

Geoffrey M. McNutt, Interlocutory Attorney:

This proceeding comes before the Board for consideration of BSN Sports, LLC's May 17, 2016, consented motion to be substituted in place of Hat World, Inc., as the petitioner in this case and its unopposed motion to suspend proceedings for ninety days.

On August 4, 2011, Hat World, Inc., filed a petition for cancellation of Respondent's Registration No. 3016764 for the mark PASS THE ROC for "[a]thletic, casual and dress apparel, namely, T-shirts, sweatshirts, sweatpants, pants, tank tops, jerseys, shorts, sport shirts, rugby shirts, sweaters, hats, caps, warm-up suits, jackets, coats, headbands, wrist bands, polo shirts, uniforms," in International Class 25. The asserted ground for cancellation is abandonment. In support of its claim, Hat World, Inc., alleged *inter alia*, that it "is the owner of valid and subsisting U.S. Trademark Registrations for the mark THE ROCK and variations thereof ... for use

with a wide variety of sports-related goods and services[.]” See Petition to Cancel, ¶ 1 (1 TTABVUE 3–4).

The records of the U.S. Patent and Trademark Office (USPTO) indicate that after the commencement of this cancellation proceeding, Hat World, Inc., assigned its marks and registrations for the mark THE ROCK and variations thereof to BSN Sports. The assignment was executed on January 19, 2016, and recorded in the Assignment Branch of the USPTO on February 1, 2016, at Reel/Frame 5721/0252.

Where a mark pleaded by a plaintiff is assigned after the commencement of the proceeding, the assignee ordinarily will be joined with the originally named party (rather than substituted) unless the discovery and testimony periods have closed, the assignor is no longer in existence, or the defendant raises no objection to substitution. See TBMP § 512.01. Here, the assignment occurred after the commencement of the proceeding, discovery remains open, and there is no indication that the assignor is no longer in existence. However, BSN Sports indicates in its motion that “[p]ursuant to a May 17, 2016 telephone conference with Respondent’s counsel, Lisa Mottes, it is understood that Respondent consents to the requested substitution.” See 44 TTABVUE 3. Respondent did not file a response disputing BSN Sports’ representation of consent or otherwise objecting to substitution. Accordingly, BSN Sport’s motion is **granted** and BSN Sports will be substituted, rather than joined, as the petitioner in this proceeding. *Societe des Produits Nestle S.A. v. Basso Fedele & Figli*, 24 USPQ2d 1079, 1079-80 (TTAB 1992) (motion to substitute granted where

defendant did not object); TBMP § 512.01 (“the assignee ordinarily will be substituted for the originally named party if ... the defendant raises no objection to substitution”).

The caption of this proceeding has been updated to reflect the substitution. Further, Simor L. Moskowitz, of Westerman, Hattori, Daniels & Adrian, LLP, is recognized as counsel for Petitioner, and the Board has updated its correspondence records accordingly.

Petitioner’s motion for a 90-day suspension of proceedings to allow time for Petitioner’s counsel to review the recently-transferred files of Hat World, Inc., and to familiarize himself with the case is **granted** as conceded and for good cause. Trademark Rules 2.117 and 2.127(a).

Upon expiration of the suspension period, proceedings will resume automatically on September 12, 2016, on the following schedule.

Proceedings Resume	9/12/2016
Discovery Closes	10/12/2016
Plaintiff’s Pretrial Disclosures	11/26/2016
Plaintiff’s 30-day Trial Period Ends	1/10/2017
Defendant’s Pretrial Disclosures	1/25/2017
Defendant’s 30-day Trial Period Ends	3/11/2017
Plaintiff’s Rebuttal Disclosures	3/26/2017
Plaintiff’s 15-day Rebuttal Period Ends	4/25/2017

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.

A copy of this order is being mailed to the following:

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