

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

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Mailed: April 3, 2012

Cancellation No. 92054959

Multi Access Limited

v.

Wang Lao Ji Food & Beverage
subsidiary, Yangcheng
Pharmaceutical Stock Corp. Ltd
of Guangzhou

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

On March 30, 2012, the Board participated by phone in the discovery conference with the parties. The participants were J. Matthew Pritchard, attorney for petitioner, Trina Longo, attorney for respondent¹, and Elizabeth Dunn, attorney for the Board. Petitioner requested Board participation in order to learn more about ACR (accelerated case resolution) procedures which may, in view of the limited pleaded issues, offer benefits to both parties in this proceeding.

As noted below, while the parties were not ready to stipulate to ACR at this time, they agreed to several

¹ Respondent attorney Allen Xue also participated in the conference.

provisions to expedite this proceeding. The parties also agreed, inasmuch as both parties are located outside the United States (with petitioner in the British Virgin Islands and respondent in China), to discuss further options to streamline this proceeding once initial disclosures have been exchanged. The option of ACR remains available throughout the proceeding.

PLEADED CLAIMS

Respondent's Registration No. 2153322 issued April 28, 1998 for the mark shown below for "processed tea leaves packaged in bags."



The petition to cancel alleges that respondent committed fraud with its Sec. 9 declaration of use and renewal and its Sec. 15 declaration of incontestability signed by Kevin Zhang, who was neither authorized to practice before USPTO nor an officer with the power to act on behalf of respondent.

Respondent's answer admits that Kevin Zhang does not own Registration No. 2153322; that Kevin Zhang executed the Sec. 9 and 15 filing as owner; that Kevin Zhang is an attorney at a Chinese firm; that Kevin Zhang is respondent's

domestic representative; and that Kevin Zhang does not have authority to practice before the USPTO. Respondent otherwise denies the salient allegations of the petition.

SETTLEMENT/RELATED PROCEEDINGS

As discussed, the parties are not presently negotiating settlement. If this changes, a stipulation to suspend the proceeding should be filed promptly because, absent suspension, the Board expects the parties to adhere to the disclosure, discovery, and trial deadlines already set by the Board. *Atlanta-Fulton County Zoo Inc. v. De Palma*, 45 USPQ2d 1858 (TTAB 1998) (mere existence of settlement negotiations did not justify party's inaction or delay).

The parties are aware of no related proceedings before the Board or in any U.S. court.² As set forth in the institution order, the parties must notify the Board promptly if they become parties to another Board proceeding or civil action which involves related marks or issues of law or fact which overlap with this case.

ACR (ACCELERATED CASE RESOLUTION) PROCEDURES

The Board informed the parties of basic information regarding the use of ACR procedures to expedite this proceeding, and the availability of ACR options set forth on

² While the parties are involved in disputes in foreign courts, the registrations involved in this proceeding are based on use and would not be affected by a court order involving foreign trademark rights.

the TTAB's webpage at www.uspto.gov. *Ballet Tech Foundation Inc. v. Joyce Theater Foundation Inc.*, 89 USPQ2d 1262, 1266 fn9 (TTAB 2008) ("ACR is a procedure akin to summary judgment in which parties can receive a determination of the claims and defenses in their case promptly, but without the uncertainty and delay typically presented by standard summary judgment practice. In order to take advantage of ACR, the parties must stipulate that, in lieu of trial, the Board can resolve any material issues of fact ... After the briefs are filed, the Board will issue a decision within fifty days, which will be judicially reviewable as set out in 37 CFR §2.145."); *Hewlett-Packard Development Co. v. Vudu Inc.*, 92 USPQ2d 1630, 1634 fn 6 (TTAB 2009) ("In the alternative, the parties may seek Accelerated Case Resolution (ACR) by stipulating, inter alia, to facts on which they agree and to procedures that will allow the parties to make their presentations on the merits of the remaining issues without the need for a formal trial procedure.").

ARRANGEMENTS REGARDING DISCLOSURES, DISCOVERY AND TRIAL

The parties stipulate to the following:

- 1) Papers may be served by email.
- 2) Initial disclosures are expanded to include documentation of the ownership of each party's registration.

- 3) The Board's stipulated protective order for the exchange of confidential information, automatically in effect, will not be modified.
- 4) The parties will respond to discovery requests in 45, and not 30, days.

How to obtain testimony from witnesses located outside the United States is a subject which the parties agreed to discuss following service of initial disclosures. Unless the parties stipulate to an alternate procedure, the discovery deposition of a natural person who resides in a foreign country, and who is a party or an officer, director, or managing agent of a party, or a person designated under Fed. R. Civ. P. 30(b)(6) or 31(a)(3) to testify on behalf of a party, may be taken on notice alone but it must be taken on written questions unless the Board, on motion for good cause, orders that the deposition be taken by oral examination. Trademark Rule 2.124.³ The parties may also consider submission of testimony through declaration, or via oral examination conducted remotely by video or phone

³ It should be noted, however that some countries prohibit the taking of testimony within their boundaries for use in any other country, including the United States, even though the witness is willing; or may permit the taking of testimony only if certain procedures are followed. A party which wishes to take a deposition in a foreign country should first consult with local counsel in the foreign country, and/or with the Office of Citizens Consular Services, Department of State, in order to determine whether the taking of the deposition will be permitted by the foreign country, and, if so, what procedure must be followed. Trademark Trial and Appeal Board Manual of Procedure (TBMP) §404.03(b)-(c) (3rd ed. 2011).

conference. Stipulations as to how testimony may be obtained should be filed with the Board.

Dates are reset below:

Initial Disclosures Due	5/29/2012
Expert Disclosures Due	9/26/2012
Discovery Closes	10/26/2012
Plaintiff's Pretrial Disclosures	12/10/2012
Plaintiff's 30-day Trial Period Ends	1/24/2013
Defendant's Pretrial Disclosures	2/8/2013
Defendant's 30-day Trial Period Ends	3/25/2013
Plaintiff's Rebuttal Disclosures	4/9/2013
Plaintiff's 15-day Rebuttal Period Ends	5/9/2013

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.

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