

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

RK

Mailed: September 23, 2014

Cancellation No. **92055558**

Economy Rent-A-Car, Inc.

v.

Emmmanouil Kokologiannis and Sons,  
Societe Anonyme of Trade, Hotels and  
Tourism S.A.

**Before Kuhlke, Lykos and Hightower,  
Administrative Trademark Judges**

**By the Board:**

This matter comes up on respondent's motion (filed May 23, 2014) for summary judgment. The motion is fully briefed.

The Board presumes the parties' familiarity with the issues herein. Therefore, for the sake of efficiency, this order does not summarize the parties' arguments raised in the briefs.

Decision

A motion for summary judgment is a pretrial device intended to save the time and expense of a full trial when the moving party is able to demonstrate, prior to trial, that there is no genuine dispute of material fact, and that it is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Opryland USA Inc. v.*

*Great American Music Show Inc.*, 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992); and *Sweats Fashions Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 4 USPQ2d 1793 (Fed. Cir. 1987). The evidence must be viewed in a light most favorable to the non-moving party, and all reasonable inferences are to be drawn in the non-movant's favor. *Lloyd's Food Products, Inc. v. Eli's, Inc.*, 987 F.2d 766, 25 USPQ2d 2027, 2029 (Fed. Cir. 1993); *Opryland USA, supra*.

Upon careful consideration of the arguments and evidence presented by the parties, and drawing all inferences with respect to the motion in favor of petitioner as the nonmoving party, we find genuine disputes of material fact that preclude our granting of respondent's motion for summary judgment.

At a minimum, a resolution of the parties' arguments concerning petitioner's standing and priority necessarily involves consideration of the newly executed *nunc pro tunc* licenses submitted by petitioner as part of its response to the motion for summary judgment and the intent of the executing parties those licenses are supposed to reflect. *See Rite Aid Corp. v. Rite-Way Discount Corp.*, 182 USPQ 698, 700 n.3 (TTAB 1974) ("A *nunc pro tunc* assignment in practice and as meant in law is an assignment made now of something which was previously done, to have effect as of the former date. ... The lateness of the execution of a *nunc pro tunc* assignment is not controlling if it does in fact reflect what actually occurred or was intended to occur on the past date."). As often stated by the Board, factual questions of intent are

particularly unsuited to disposition on summary judgment. *See Copelands' Enterprises Inc. v. CNV Inc.*, 945 F.2d 1563, 20 USPQ2d 1295, 1299 (Fed. Cir. 1991). We therefore **DENY** respondent's motion for summary judgment on the issues of standing and priority.

We similarly **DENY** respondent's motion for summary judgment on petitioner's claim of abandonment since the question of abandonment must, by definition, consider the intent of respondent. *See* 15 U.S.C. § 1127 ("A mark shall be deemed to be 'abandoned' if ... its use has been discontinued with intent not to resume such use."). And while intent not to resume may be inferred from circumstances, respondent's proffered evidence of annual use in the form of screenshots of respondent's website reflecting the registered mark and their alleged "legal equivalents" from as early as 2003 fails to demonstrate an absence of a genuine dispute of material fact as to respondent's use of the registered mark in the United States, particularly in the face of respondent's own discovery responses highlighted by petitioner that raise doubt as to respondent's use of the mark and rendering of services in the United States. *See Petitioner's Memorandum in Opposition*, p. 8 and exhibits referenced therein.<sup>1</sup>

Proceedings herein are **RESUMED** and dates are **RESET** as follows:

---

<sup>1</sup> The parties are reminded that evidence submitted in support of or in opposition to a motion for summary judgment is of record only for consideration of that motion. Any such evidence to be considered at final hearing must be properly introduced during the appropriate trial period. *See, e.g., Levi Strauss & Co. v. R. Joseph Sportswear Inc.*, 28 USPQ2d 1464 (TTAB 1993).

Plaintiff's 30-day Trial Period Ends	<b>10/31/2014</b>
Defendant's Pretrial Disclosures Due	<b>11/15/2014</b>
Defendant's 30-day Trial Period Ends	<b>12/30/2014</b>
Plaintiff's Rebuttal Disclosures Due	<b>1/14/2015</b>
Plaintiff's 15-day Rebuttal Period Ends	<b>2/13/2015</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 taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

\* \* \*