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

Mailed: July 25, 2012

Cancellation No. 92055643

Monster Cable Products, Inc

v.

NeoVictory Technology Co., Ltd.

Andrew P. Baxley, Interlocutory Attorney:

On July 23, 2012, petitioner requested Board participation in the parties' mandatory discovery conference. In reviewing the pleadings in preparation therefor, the Board noticed the following.

Petitioner seeks cancellation of respondent's involved registration on the ground of abandonment. However, the abandonment claim set forth in the petition to cancel is insufficiently pleaded because it provides no information upon which such claim is based.[1]

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[1] As an affirmative defense, respondent alleges that petitioner's pleaded mark is "deceptively similar" to respondent's involved mark and that registration of petitioner's pleaded mark "would be a source of damage and injury to" respondent. However, petitioner's pleaded application Serial No. 85231780 is suspended in *ex parte* examination pending disposition of this proceeding. Accordingly, any opposition to registration of petitioner's mark is premature. See Trademark Act Section 13, 15 U.S.C. Section 1063; Trademark Rule 2.101.

A legally sufficient claim of abandonment requires an allegation of (1) at least three consecutive years of nonuse,[2] or (2) facts that show a period of non-use less than three years coupled with an intent not to resume use. See Trademark Act Section 45, 15 U.S.C. Section 45, 15 U.S.C. Section 1127; *Otto Int'l Inc. v. Otto Kern GmbH*, 83 USPQ2d 1861 (TTAB 2007). If petitioner intends to allege partial abandonment, petitioner should provide fair notice of a claim of partial abandonment in which it specifies goods for which respondent has abandoned its mark. See *Eurostar Inc. v. "Euro-Star" Reitmoden GmbH & Co. KG*, 34 USPQ2d 1266 (TTAB 1994); TBMP Section 506.01 (3d ed. rev. 2012).

Petitioner is allowed until twenty days from the mailing date set forth in this order to file an amended petition to cancel in accordance with the foregoing, failing which the Board may dismiss the petition to cancel for failure to state a claim under Fed. R. Civ. P. 12(b)(6). Proceedings herein are otherwise suspended.

[2] Respondent's involved Registration No. 3737908 was issued on January 12, 2010, and respondent filed the statement of use in support of that registration on November 4, 2009, less than three years ago.