

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

Baxley

Mailed: August 20, 2012

Cancellation No. 92055643

Monster Cable Products, Inc

v.

NeoVictory Technology Co.,  
Ltd.

**By the Trademark Trial and Appeal Board:**

Pursuant to the Board's July 25, 2012 order, petitioner filed an amended petition to cancel. In the amended petition to cancel, petitioner alleges (1) abandonment based on nonuse of the involved NEOVICTORY mark in connection with the goods listed in the involved registration for at least three years, and (2) no *bona fide* use of the involved mark in commerce in the ordinary course of trade at the time respondent filed its statement of use in the application for the involved registration.

Regarding the repleaded abandonment claim, the application for the involved registration was filed based on an assertion of a *bona fide* intent to use the mark in commerce under Trademark Act Section 1(b), 15 U.S.C. Section 1051(b). Respondent filed the statement of use in that application on November 4, 2009, less than three years prior

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to the filing of the petition to cancel. A cancellation petitioner cannot assert abandonment based on a three-year period of nonuse that began before respondent filed its statement of use. See *Consolidated Cigar Corp. v. Rodriguez*, 65 USPQ2d 1153 (TTAB 2002). Accordingly, the repleaded abandonment claim is insufficient, and paragraphs 10-13 are therefore *sua sponte* stricken from the amended petition to cancel. See Fed. R. Civ. P. 12(f); TBMP Section 506.01 (3d ed. rev. 2012). The amended petition to cancel is otherwise sufficiently pleaded. See *ShutEmDown Sports Inc. v. Lacy*, 102 USPQ2d 1036 (TTAB 2012); *Hartwell Co. v. Shane*, 17 USPQ2d 1569 (TTAB 1990).

Proceedings herein are resumed. Dates are reset as follows.

Answer to Amended Petition to Cancel Due	9/17/2012
Deadline for Discovery Conference <sup>1</sup>	10/17/2012
Discovery Opens	10/17/2012
Initial Disclosures Due	11/16/2012
Expert Disclosures Due	3/16/2013
Discovery Closes	4/15/2013
Plaintiff's Pretrial Disclosures Due	5/30/2013
Plaintiff's 30-day Trial Period Ends	7/14/2013
Defendant's Pretrial Disclosures Due	7/29/2013
Defendant's 30-day Trial Period Ends	9/12/2013
Plaintiff's Rebuttal Disclosures Due	9/27/2013
Plaintiff's 15-day Rebuttal Period Ends	10/27/2013

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<sup>1</sup> Petitioner's request (filed July 23, 2012) for Board participation in the parties' mandatory discovery conference is noted. After respondent files its answer, the parties should reach agreement for three possible dates and times for such conference and telephone the Board attorney assigned to this case at 571-272-4253 to make final the scheduling of that conference.

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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.

If either of the parties or their attorneys should have a change of address, the Board should be so informed promptly.