

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Alexandria, VA 22313-1451
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WINTER/am

Mailed: August 7, 2014

Cancellation No. 92056154

MCS Central Europe Sp. z.o.o.

v.

World Marketing of America, Inc.

By the Trademark Trial and Appeal Board:

On April 22, 2014 the Board issued an order to show cause under Trademark Rule 2.134(b) in view of the cancellation of Registration No. 3169769 under Section 8 of the Trademark Act on June 14, 2013.

On May 12, 2014, Respondent filed a response stating, *inter alia*, that it had not been using the involved mark on the identified goods since prior to the time the petition to cancel was filed. Respondent requested that the cancellation proceedings be dismissed as moot. In the alternative, Respondent requests that judgment be entered only with respect to Petitioner's claim of abandonment as to the goods identified in the registration. Respondent states that it may use the involved mark in the future for replacement parts or other heating products, but not for the goods identified in the registration. Petitioner did not file a response to Respondent's motion.

Generally, when the registrant states that use of the registered mark has in fact been discontinued and that registrant has no present intention to resume use of such mark in connection with the identified goods, judgment is to be entered against the registrant on the ground of abandonment. *Marshall Field & Co. v. Mrs. Fields Cookies*, 11 USPQ2d 1154, 1156 (TTAB 1989).

However, when the registrant has moved to dismiss the petition for cancellation as moot, in light of the failure of Respondent to renew its involved registration under Section 8 of the Trademark Act, Petitioner would be entitled to elect whether it desires to dismiss its petition for cancellation without prejudice or wishes to go forward with this proceeding to obtain a determination of the pleaded issues. Nonetheless, since Petitioner's failure to respond to the Respondent's motion indicates a preference for the former rather than the latter, the motion to dismiss the cancellation proceeding as moot is **granted** to the extent that the petition for cancellation is **dismissed without prejudice**.¹ *C.H. Guenther & Son Inc. v. Whitewing Ranch Co.*, 8 USPQ2d 1450, 1452 (TTAB 1988).

The above-referenced cancellation stands, and no further action is necessary by the Board.

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¹ In view thereof, Respondent's motion filed June 20, 2014 is moot.