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

KIM

Mailed: October 1, 2013

Cancellation Nos. 92056820
92056821
92056873

Hollywood Casino Corporation

v.

Hollywood Burger Holdings, Inc.

Before Kuhlke, Wellington and Gorowitz,
Administrative Trademark Judges

By the Board:

These proceedings come up on respondent's motions (filed June 27, 2013) for summary judgment seeking entry of judgment against its involved registrations[1] on petitioner's claim of non-use.[2] The motions are 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.

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[1] Registration No. 4036289 (Cancellation No. 92056820), Registration No. 4026623 (Cancellation No. 92056821), and Registration No. 3951706 (Cancellation No. 92056873).

[2] The two notices of appearance filed on behalf of respondent on April 15 and June 27, 2013, are noted. As counsel in the later-filed notice of appearance has not filed a written request to change the correspondence address, respondent's correspondence address will remain as set forth in the earlier-filed notice. *See* TBMP § 117.02 (2013).

As a preliminary matter, we note that petitioner filed an amended pleading on April 23, 2013, in each of the cancellation proceedings. Under Fed. R. Civ. P. 15(a)(1)(B), a party may amend its pleading once as a matter of course within 21 days after service of a responsive pleading if the pleading is one to which a responsive pleading is required. As the earliest answer among the three proceedings was filed on April 2, 2013, the amended petition for cancellation in each proceeding is **ACCEPTED** and will serve as the operative pleading therein.[3]

Turning to respondent's motions for summary judgment, we construe them as respondent's consent to entry of judgment against itself on petitioner's claim of non-use. When presented with such a request, the Board will enter judgment against the requesting party and, consistent with that practice, we do so here. While the plaintiff, under such circumstances, would normally be afforded the opportunity to decide whether it wishes to reach the merits of any remaining claims, we note that petitioner has already requested "that its claims for fraud and likelihood of confusion … be dismissed <u>without prejudice</u> …." *Petitioner's Response*, p. 2 (emphasis in original). In view thereof, **JUDGMENT is entered** against respondent on the claim of no bona fide use as to each of the subject registrations and the petitions are **DISMISSED without prejudice** as to

[3] We note that the amended pleading has already been accepted in Cancellation No. 92056873.

petitioner's claims of fraud and priority and likelihood of confusion. Registration Nos. 3951706, 4026623, and 4036289 will be cancelled in due course.

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