

THIS DECISION IS
NOT A PRECEDENT
OF THE TTAB

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

coggins

Mailed: June 30, 2014

Cancellation No. 92057092

Cequent Performance Products, Inc.

v.

Bulldog Winch Co., LLC

**Before Kuhlke, Bergsman, and Greenbaum,
Administrative Trademark Judges**

By the Board:

Now before the Board is respondent's motion (filed February 27, 2014) for summary judgment on the affirmative defense of laches. The motion is fully briefed.

Motion for Summary Judgment

Summary judgment is an appropriate method of disposing of cases in which there are no genuine disputes as to any material facts, thus leaving the case to be resolved as a matter of law. *See* Fed. R. Civ. P. 56(a). The party moving for summary judgment has the initial burden of demonstrating that there is no genuine dispute of material fact remaining for trial and that it is entitled to judgment as a matter of law. *See Celotex Corp. v. Catrett*, 477 U.S. 317 (1987); and *Sweats Fashions Inc. v. Pannill Knitting Co. Inc.*, 833

F.2d 1560, 4 USPQ2d 1793 (Fed. Cir. 1987). The nonmoving party must be given the benefit of all reasonable doubt as to whether genuine disputes of material fact exist; and the evidentiary record on summary judgment, and all inferences to be drawn from the undisputed facts, must be viewed in the light most favorable to the nonmoving party. *See Opryland USA, Inc. v. Great American Music Show, Inc.*, 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992).

Laches is generally available as an affirmative defense against the plaintiff asserting the ground of priority and likelihood of confusion in a cancellation proceeding. *See National Cable Television Assoc. Inc. v. American Cinema Editors Inc.*, 973 F.2d 1572, 19 USPQ2d 1424 (Fed. Cir. 1991) (defense of laches considered in connection with a cancellation proceeding brought under Section 2(d)). There is an exception, however, when confusion is inevitable, because any injury to respondent caused by petitioner's delay is outweighed by the public's interest in preventing confusion. *See Turner v. Hops Grill & Bar Inc.*, 52 USPQ2d 1310 (TTAB 1999). In order to prevail on the affirmative defense of laches in its motion for summary judgment, respondent must first establish that there is no genuine dispute that petitioner unduly or unreasonably delayed in asserting its rights, and that respondent has been materially prejudiced as a result of that delay. *See Bridgestone/Firestone Research Inc. v. Automobile Club de l'Ouest de la France*, 245 F.3d 1359, 58 USPQ2d 1460, 1462 (Fed. Cir. 2001); and *Fishking Processors Inc. v. Fisher King Seafoods Ltd.*, 83 USPQ2d 1762,

1765 (TTAB 2007). Respondent must then establish that there is no genuine dispute that confusion between the parties' marks is not inevitable. *See, e.g., Jansen Enter. Inc. v. Rind*, 85 USPQ2d 1104, 1110 (TTAB 2007).

For purposes of this order, we presume the parties' familiarity with the pleadings, the history of the proceeding, and the arguments and evidence submitted with respect to the motion for summary judgment.

Upon careful consideration of respondent's arguments and the evidence presented by the parties, and drawing all inferences with respect to respondent's motion in favor of petitioner as the nonmoving party, we find that respondent has not demonstrated the absence of a genuine dispute of material fact and that it is entitled to judgment in its favor on the defense of laches. Genuine disputes of material fact remain, at a minimum, as to whether petitioner's delay was unreasonable or inexcusable; whether respondent suffered any material prejudice, and, if so, to what extent that prejudice is attributable to petitioner's inaction; and whether the commercial impressions created by the parties' marks, coupled with the similarity or dissimilarity of the parties' goods, would render confusion between the marks inevitable. Accordingly, respondent's motion for summary judgment on the defense of laches is **denied**.¹

¹ 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., Zoba Int'l Corp. v. DVD Format/LOGO Licensing Corp.*, 98 USPQ2d 1106, 1115 n.10 (TTAB 2011).

Schedule

Proceedings are resumed, and dates are reset on the following schedule.

Plaintiff's 30-day Trial Period Ends	8/29/2014
Defendant's Pretrial Disclosures	9/13/2014
Defendant's 30-day Trial Period Ends	10/28/2014
Plaintiff's Rebuttal Disclosures	11/12/2014
Plaintiff's 15-day Rebuttal Period Ends	12/12/2014

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.