

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

GCP

Mailed: March 2, 2015

Cancellation No. 92057403

Bamboula 8, LLC

v.

The Original Wailers, LLC

By the Trademark Trial and Appeal Board:

This case now comes before the Board for consideration of Respondent's motion (filed December 19, 2014) for involuntary dismissal under Trademark Rule 2.132(b). Petitioner filed a timely response to the motion on January 7, 2015.

In support of its motion, Respondent maintains that Petitioner, during its assigned testimony period, failed to submit any evidence to support its asserted claims other than USPTO records for its own pleaded registration and pleaded pending applications. As such, Respondent argues that dismissal of the petition to cancel is required under Trademark Rule 2.132(b).

In response, Petitioner contends that Respondent's motion for involuntary dismissal is untimely because it was not filed before the opening of Respondent's testimony period, as required by Trademark Rule 2.132(c). Even assuming that Respondent's motion was timely under Board rules,

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Petitioner nonetheless maintains that the evidence submitted during its assigned testimony period is sufficient to prove its asserted claims.

Decision

Trademark Rule 2.132(b) provides in relevant part, as follows:

If no evidence other than a copy or copies of Patent and Trademark Office records is offered by any party in the position of plaintiff, any party in the position of defendant may, without waiving the right to offer evidence in the event the motion is denied, move for dismissal on the ground that upon the law and the facts the party in the position of plaintiff has shown no right to relief.

Trademark Rule 2.132(c) provides that “[a] motion filed under paragraph (a) or (b) of this section must be filed before the opening of the testimony period of the moving party, except that the Trademark Trial and Appeal Board may in its discretion grant a motion **under paragraph (a)** even if the motion was filed after the opening of the testimony period of the moving party.” (emphasis added).

Clearly, the language of Trademark Rule 2.132(c) does not provide the Board with the discretion to entertain a motion for involuntary dismissal under Trademark Rule 2.132(b) if it was filed after the opening of a defendant’s testimony period. Here, Respondent’s testimony period, as last reset, commenced on November 29, 2014. Respondent filed its motion for involuntary dismissal subsequent to the opening of its testimony period, i.e., December 19, 2014.

Because Respondent filed its motion for involuntary dismissal under Trademark Rule 2.132(b) after the commencement of its testimony period,

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Respondent's motion is **DENIED** as untimely and will be given no further consideration.

The Board notes that nine days remained in Respondent's testimony period at the time it filed its motion for involuntary dismissal. Respondent provided no explanation as to why it waited so long to file its motion when it was clearly on notice prior to the opening of its own testimony period that Petitioner only submitted USPTO records for its pleaded registration and pleaded pending applications during Petitioner's testimony period. Accordingly, the Board, as set forth below, will only afford Respondent the time remaining in its testimony period as of the date it filed its motion for involuntary dismissal.

Respondent's testimony re-commences on **March 23, 2015** and closes on **March 31, 2015**. Remaining trial dates are reset as follows:

Plaintiff's Rebuttal Disclosures Due	4/15/2015
Plaintiff's 15-day Rebuttal Period Ends	5/15/2015

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 Trademarks Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.