

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

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Mailed: September 22, 2014

Cancellation No. 92057757

Avalanche, LLC

v.

Jewcy Media, LLC

By the Trademark Trial and Appeal Board:

On March 27, 2014, the Board issued an order to show cause under Trademark Rule 2.134(b) in view of the cancellation of Registration No. 3228371 for the mark JEWICY under Section 8 of the Trademark Act.

In its response, filed April 16, 2014, to the show cause order, respondent acknowledged the cancellation of its registration and averred that its decision not to allow its registration to be cancelled under Section 8 was a business decision and was not for the purpose of avoiding this proceeding.

Petitioner was allowed time in which to elect whether to go forward with the cancellation proceeding or to have the cancellation proceeding dismissed without prejudice as moot. Petitioner filed a response asking the Board to enter judgment.¹

¹ Respondent filed a “reply brief” in response, which the Board has given no consideration. Even if the Board had considered the reply, it would make no difference to the outcome herein.

Trademark Rule 2.134(b) provides that the owner of a trademark registration who has inadvertently permitted a registration that is the subject of a cancellation, to become cancelled may, “show cause why such cancellation or failure to renew should not be deemed to be the equivalent of a cancellation by request of respondent without the consent of the adverse party and should not result in entry of judgment against respondent....” If respondent submits a showing that the cancellation or expiration was the result of an inadvertence or mistake, judgment will not be entered against it. *See* TBMP § 602.02(b).

As respondent has conceded that its failure to file a Section 8 affidavit or declaration was a deliberate business decision made prior to commencement of this proceeding, and not to avoid judgment in the cancellation, judgment will be entered against respondent on the ground of abandonment, the sole ground in the petition to cancel. *See Marshall Field & Co. v. Mrs. Fields Cookies*, 11 USPQ2d 1154, 1156 (TTAB 1989) (where registrant stated that failure to file § 8 affidavit was result of deliberate business decision made prior to commencement of proceeding and not to avoid judgment, judgment was entered on ground of abandonment).

In view thereof, and pursuant to Trademark Rule 2.134(b), judgment is hereby entered against respondent on the ground of abandonment in the cancellation proceeding as to Registration No. 3228371, and the petition to cancel is **granted**.