

UNITED STATES PATENT AND TRADEMARK OFFICE

U. S. APPLICATION SERIAL NUMBER: 77/626242

U. S. REGISTRATION NUMBER: 3,871,019

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MARK:

WWE SUPERSTARS

ISSUE/MAILING DATE:

December 08, 2014

APPLICANT/REGISTRANT:

World Wrestling Entertainment, Inc.

CORRESPONDENT'S REFERENCE/DOCKET NO:

CORRESPONDENT'S EMAIL ADDRESS:

PETITION TO DIRECTOR DISMISSED

Albert Patterson's (petitioner's) September 9, 2013 petition¹ to the Director of the United States Patent and Trademark Office (Director) has been received. The petition requests that the Director of the United States Patent and Trademark Office (Director) review the orders of the Trademark Trial and Appeal Board (TTAB) issued on June 23, 2014 and July 30, 2014 and the order of "Judge Rudolph Randa's signed on August 21, 2006".

The petition is DISMISSED.

Petition is Incomplete and Untimely

Every petition to the Director must include a \$100 petition fee and a **verified statement of the facts supporting the petition**. See 37 C.F.R. §§2.6(a)(15), 2.146(c); see also *Trademark Manual of Examining Procedure* ("TMEP") §§1705.02, 1705.03.

In addition, when any petition is filed from an interlocutory order of the TTAB, the petition must be filed within **thirty days** after the date of issuance of the order from which relief is requested.

¹ On September 24, 2014 petitioner provided a complete copy of the paperwork submitted on September 9. Petitioner stated that a review of the records of the United States Patent and Trademark Office did not appear to contain a complete copy of what had been sent.

A review of the petition indicates that it did not contain a verified statement of the facts, which usually can be remedied at a later date, but also was filed more than 30 days after the date of the orders about which petitioner is seeking review. While petitioner states that it did not receive the June 23 or July 30 order, he also does not provide any information when he learned of the Orders. However, even if the instant petition were timely filed or the Director could permit this petition to be filed at this time, having just learned of the Orders, petitioner's request to review the Orders likely would be denied.

Furthermore, to the extent petitioner is requesting that the Director review a decision of the United States District Court of the Eastern District of Wisconsin, Case Number 2:03-cv-00374, decided on August 21, 2006, the Director has no authority to review such a decision or provide any guidance on that decision. *See generally* 35 U.S.C. §2 and 37 C.F.R. §2.146.

Petition to Review Board Orders Would be Denied on the Merits

*Facts*²

Petitioner filed a cancellation against U.S. Registration No. 3871019 for the mark WWE SUPERSTARS on September 9, 2013. (Cancellation No. 92057838). On October 21, 2013, registrant, World Wrestling Entertainment, Inc., defendant in the cancellation proceeding, filed a motion to dismiss the cancellation under Fed.R.Civ.P. 12 (b)(6). On December 4, 2013, the TTAB granted the motion to dismiss the cancellation proceeding with prejudice.

On December 18, 2013 petitioner filed a motion to vacate the judgment of the TTAB entered on December 4, 2013. On March 5, 2014, the TTAB stated that the motion filed by petitioner did not contain a proper certificate of service as required by Trademark Rule 2.119. 37 C.F.R. §2.119. The TTAB granted petitioner fifteen days to show proof of service on the attorney for the defendant. On March 10, 2014, petitioner faxed a new memorandum entitled "Motion to Review" and provided evidence that the new "Motion to Review" had been sent to the attorney for the defendant.

On March 28, 2014, defendant opposed petitioner's motion to review. On April 3, 2014, the TTAB again addressed petitioner's December 18, 2013 motion to vacate entry of judgment and stated that the March 5 Order granted petitioner time to prove that the motion filed on **December 18, 2013** ("the December 18, 2013 motion") was properly served on defendant. The TTAB stated that what petitioner submitted on March 10 was a new motion showing service of the new motion. The TTAB further noted that the new motion was improperly filed with the TTAB by facsimile, which is not permitted in inter parte proceedings. The TTAB stated that no consideration would be given to the newly filed motion. However, the TTAB granted petitioner ten days to submit proof of service for the **December 18, 2013** motion. The TTAB even provided a sample of what should be provided with that proof.

On April 7, 2014, petitioner filed a reply to its motion to vacate judgment filed on March 10. Petitioner did not file submit proof that the **December 18, 2013** motion was served properly on defendant. Petitioner continued to file paperwork with the TTAB but did not submit the required proof of service of the **December 18, 2013** motion as required in the March 5 Order and the April 3 Order. On June 23, 2014, the TTAB issued a final decision stating that "[d]espite being given multiple opportunities to correct improper service of the December 18, 2013 motion to vacate judgment, petitioner has failed to properly serve that motion." As such, the TTAB

² The facts discussed below are only those relevant to the instant petition.

decided that the December 18, 2013 motion would be given no consideration and the December 3 Order dismissing the cancellation proceeding would stand.

On July 2, 2014, petitioner sent the TTAB an inquiry regarding the status of its motion. On July 30, 2014, the TTAB informed petitioner that the June 23 Order had issued and that the July 2 correspondence would be given no consideration as it too had not been properly served on the opposing side in accordance with Trademark Rule 2.119.

Standard of Review of Interlocutory Orders

The Director may exercise supervisory authority in appropriate circumstances. 35 U.S.C. §2; 37 C.F.R. §2.146(a)(3); TMEP §1707. In an inter partes proceeding, a party may petition the Director to review an order or decision of the TTAB that concerns a procedural matter and does not end the litigation before the TTAB. TBMP §§901.02(a), 905; TMEP §§1703, 1704. However, the Director will reverse an interlocutory order of the TTAB only if there is clear error or abuse of discretion. *Kimberly Clark Corp. v. Paper Converting Indus. Inc.*, 21 USPQ2d 1875, 1877 (Comm'r Pats. 1991); *Riko Enters., Inc. v. Lindsley*, 198 USPQ 480, 482 (Comm'r Pats. 1977); TMEP §1703. For the reasons set forth below, the circumstances presented in this case do not demonstrate that the TTAB committed clear error or abused its discretion.

The TTAB gave petitioner two opportunities to prove that it served the December 18, 2013 motion on the opposing side. Petitioner did not submit the required proof, but rather filed a new motion and responses to the new motions, showing proof of service of those **later filed documents** (emphasis added). In view of the repeated opportunities that the TTAB granted petitioner to complete the December 18, 2013 motion, the TTAB did not abuse its discretion or commit a clear error in deciding not to grant any consideration to the December 18 motion and to have the December 3 Order dismissing the cancellation stand as issued. Furthermore, even were petitioner to submit evidence of proper service of the December 18, 2013 motion, such evidence would be untimely and would not be forwarded to the TTAB for consideration.

Decision

In light of the fact that the petition is incomplete and untimely, the petition to the Director is dismissed. The case will be forwarded to the TTAB for final action. Since the petition is being dismissed, the petition fee will be refunded in due course.

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