

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

Mailed: January 31, 2016

Cancellation No. 92058412

Spartan Brands, Inc.

v.

Randy Appell

George C. Pologeorgis,
Administrative Trademark Judge:

The time for Petitioner to file a brief on the case has expired, and no brief on the case is of record.

Trademark Rule 2.128(a)(3) provides

When a party in the position of plaintiff fails to file a main brief, an order may be issued allowing plaintiff until a set time, not less than fifteen days, in which to show cause why the Board should not treat such failure as a concession of the case. If plaintiff fails to file a response to the order, or files a response indicating that he has lost interest in the case, judgment may be entered against plaintiff.

In view of the failure to file a brief, Petitioner is allowed until **thirty (30) days** from the mailing date of this order to show cause why the Board should not treat the failure to file a brief as a concession of the case, failing which a judgment dismissing the petition for cancellation with prejudice will be entered. *See* TBMP §§ 536 and 801.02(a) (2015).

Furthermore, the Board notes that Petitioner's testimony period closed on August 4, 2015, 2013, as last reset, *see* 13 TTABVUE, yet the record demonstrates that Petitioner has failed to submit any evidence or take any testimony during its assigned testimony period. In view thereof, Petitioner is allowed the same **thirty (30) days**, as provided above, to show cause why judgment should not be entered against Petitioner for failure to prosecute this case, failing which judgment will be entered against Petitioner and the petition to cancel will be dismissed with prejudice. *Cf.* Trademark Rule 2.132.

Proceedings are otherwise suspended pending Petitioner's response to this order.¹

¹ If a plaintiff files a brief on the case concurrently with its response to an order to show cause under Trademark Rule 2.128(a)(3), or wishes to be afforded an opportunity to file its brief, a plaintiff should set forth a motion to reopen its time to file a brief, which motion will be determined on the basis of whether plaintiff has shown that its failure to timely file such brief was the result of excusable neglect. *See* TBMP § 536. Similarly, to the extent a plaintiff seeks to reopen its testimony period in order to submit evidence to support its asserted claims, the motion must establish that the failure to submit evidence during the plaintiff's assigned testimony in the first instance was the result of excusable neglect.