

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

DUNN

Mailed: February 9, 2015

Cancellation No. 92060464

Safeside Tactical, LLC

v.

Cheytac USA LLC

Elizabeth A. Dunn, Attorney:

On January 13, 2015, respondent filed an unconsented proposed amendment to its Registration No. 4509171.

Registration No. 4509171 issued April 8, 2014 from an application filed February 2, 2013 alleging use anywhere and in commerce at least as early as December 15, 2012. By the proposed amendment respondent seeks to amend the dates of use to allege the earlier date of June 24, 2011. See Trademark Rule 2.71(c)(1) (“In an application under section 1(a) of the Act, the applicant may not amend the application to specify a date of use that is subsequent to the filing date of the application”). The unconsented proposed amendment was (1) not accompanied by the proper fee under Trademark Rule 2.6; and/or (2) not

verified or supported by a declaration under Trademark Rule 2.20. See Trademark Rules 2.6(a)(11), 2.133(a) and 2.173(b).¹

This proposed change, if granted, would affect the issues involved in the proceeding, including Petitioner's pleaded claim of priority of use and likelihood of confusion.

In accord with its usual practice, the Board generally will defer determination of a timely filed (i.e., pretrial) unconsented motion to amend in substance until final decision, or until the case is decided upon summary judgment. *Enbridge Inc. v. Excelerate Energy L.P.*, 92 USPQ2d 1537, 1539 n.3 (TTAB 2009) (motion to amend identification of goods and dates of use deferred until final hearing); *Fort Howard Paper Co. v. C.V. Gambina Inc.*, 4 USPQ2d 1552, 1554-55 (TTAB 1987) (motion to amend dates of use deferred); Trademark Trial and Appeal Board Manual of Procedure (TBMP) §514.03 (2014).

Accordingly, respondent is allowed thirty days from the mailing date of this order to submit the required fee and/or declaration in support of the amendment, failing which said amendment will be given no further consideration. If respondent perfects its proposed unconsented amendment, the Board will defer consideration until decision upon motion for summary judgment or trial.

Proceedings are otherwise suspended.

¹ Before this cancellation was filed on December 1, 2014, respondent submitted a deficient request to amend the registration pursuant to Trademark Act Sec. 7 on November 7, 2014.