

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

BUO

Mailed: July 28, 2016

Cancellation No. 92061571

*Gestion Diane Lanctot Ltee*

*v.*

*Ivo N Njabe*

**Benjamin U. Okeke, Interlocutory Attorney:**

On March 29, 2016, the Board suspended this proceeding in light of Petitioner's withdrawal of the petition to cancel without evidence of Respondent's written consent. Inasmuch as Petitioner asserted that Respondent consented to the withdrawal, the Board granted Petitioner thirty days to submit Respondent's written consent to the withdrawal.

Petitioner responded to the Board's order by submitting "copies of e-mail correspondence between Petitioner and Respondent," purporting to "constitut[e] Respondent's 'written consent.'" 15 TTABVUE 2. However, on April 3, 2016, Respondent contested the withdrawal of the petition without prejudice. Respondent argues, "while [Respondent] acknowledges Petitioner's decision to withdraw, given that the decision is within Petitioner's rights, [Respondent] has NOT consented to a withdrawal without prejudice." 16 TTABVUE 3 (emphasis in original). Respondent

also attached evidence in the form of copies of email correspondence purporting to show that it had not consented to a withdrawal without prejudice.

Trademark Rule 2.114(c) states in whole:

The petition for cancellation may be withdrawn without prejudice before the answer is filed. After the answer is filed, the petition may not be withdrawn without prejudice except with the written consent of the registrant or the registrant's attorney or other authorized representative.

The "written consent" contemplated by the rule must be in the form of an original, handwritten signature, a copy of an original, handwritten signature, or a complying electronic signature. *See* Trademark Rule 2.193(c)(1). Respondent filed his answer on June 25, 2015; therefore, the instant petition to cancel cannot be withdrawn without prejudice absent the written consent of Respondent. Petitioner did not provide evidence of such written consent with its initial motion to withdraw the petition to cancel and has yet to provide such written consent. Instead, Petitioner relies upon email correspondence between the parties to insinuate "written" consent from Respondent. However, the evidence of record when viewed in total does not support such a finding. Indeed, as Respondent argues, the emails more closely support the proposition that Respondent "acknowledged" Petitioner's right to withdraw the petition to cancel of its own volition, but did not consent to withdrawal without prejudice.

The language of Trademark Rules 2.114(c) and 2.193(c)(1) make it clear that a parties' consent is to be definitive and in written form, and not to be surmised from loosely worded emails that may lead to any number of conflicting interpretations.

Accordingly, Petitioner's motion to withdraw the petition to cancel without prejudice is **DENIED**.

Petitioner is allowed **THIRTY DAYS** from the mailing date to show cause why this proceeding should not be dismissed with prejudice. If Petitioner fails to respond in the time allowed the petition to cancel will be dismissed with prejudice. Alternatively, Petitioner may respond by withdrawing its motion to withdraw the petition to cancel, or Petitioner may submit Respondent's *written* consent to the withdrawal specifically stating that Respondent consents to a withdrawal of the petition to cancel without prejudice.

The proceeding is otherwise **SUSPENDED** pending Petitioner's response to this order. The remaining trial dates will be reset upon resumption of the proceeding, if necessary.