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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92061571
Party	Plaintiff Gestion Diane Lanctot Ltee
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Date	08/29/2016
Attachments	Petitioner Response to Order.pdf(135110 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

GESTION DIANE LANCTÔT LTÉE,

Petitioner,

v.

IVO N. NJABE,

Registrant.

In the matter of Trademark
Registration No. 4,299,998

For the mark NIVO (Stylized)
Registered on March 12, 2013

Cancellation No. **92061571**

PETITIONER’S RESPONSE TO THE BOARD’S JULY 28, 2016 ORDER

In response to the Board’s July 28, 2016 Order, Petitioner confirms its intent to withdraw the petition to cancel. In view of Respondent’s Opposition to the motion, and the history of unproductive communications between the parties, Petitioner believes it is unlikely that it will be able to obtain a signed, written consent as described in the July 28, 2016 Order. Regardless, it remains Petitioner’s intent to withdraw its Petition.

Petitioner in good faith reduced to writing, and confirmed with Respondent, Respondent’s consent to Petitioner’s withdrawal in this case. (Dkt 15) Communication with Respondent has been extremely difficult during the pendency of this matter. Given the circumstances and disjointed history of this proceeding (*see e.g.*, February 3, 2016 conference call with the Board and the Board’s subsequent February 4, 2016 Order), Petitioner believed the correspondence submitted in further support of its withdrawal (*see* Dkt 15) was sufficient written consent to support a withdrawal without prejudice. The Board apparently disagrees.

Petitioner respectfully points out, however, that Trademark Rule 2.114(c) does not state anything about a signature being required, and Petitioner is not aware of any

precedent for importing the requirements of Rule 2.193(c)(1) into Rule 2.114(c).

Rule 2.193(c)(1) is directed to correspondence that “requires a signature,” which requirement is not stated or suggested by the language of Rule 2.114(c).

Conversely, there are several trademark rules that do state a requirement for a signature.

Rule 2.193(e) lists several such rules, such as:

- Verification of facts under § 2.76 (which rule states at subsection (b) that a “complete amendment to allege use must include: (1) A statement that is signed and verified . . .”), under § 2.88 (“statement that is signed and verified”); or under § 2.89 (“a statement . . . signed and verified”). *See* Rule 2.193(e)(1).
- Procedures for responding to Office actions under § 2.62 (which rule states at subsection (b) that “the response must be signed by the applicant, someone with legal authority to bind the applicant. . . , or a practitioner. . .”); under § 2.66 (“[a] statement, signed by someone with firsthand knowledge of the facts...”); or under § 2.68 (“written request for abandonment or withdrawal of the application, signed by the applicant, someone with legal authority to bind the applicant..., or a practitioner...”). *See* Rule 2.193(e)(2).
- Powers of attorney under § 2.17 (which rule states at subsection (c) that “[a] power of attorney must...be signed by the individual applicant...”); or under § 2.19 (revocation of representation “upon written notification signed by the applicant”). *See* Rule 2.193(e)(3).
- Petitions to revive under § 2.66 (which at (b)(2) requires “a statement, signed by someone with firsthand knowledge of the facts”). *See* Rule 2.193(e)(4).

- Petitions to Director under § 2.146 (which at (c) requires that “the petition must be signed by the petitioner”). *See* Rule 2.193(e)(5).
- Surrenders for cancellation under § 2.172 (which requires that “[t]he application for surrender must be signed by the owner of the registration...”).
See Rule 2.193(e)(6).
- Renewal applications under § 2.183 (which at (a) requires that a complete renewal application must include a request “signed by the registrant or the registrant’s representative”). *See* Rule 2.193(e)(7).
- Revocation of domestic representative under § 2.24 (which at (b) requires that a request to change or revoke “must be signed by the applicant, someone with legal authority to bind the applicant..., or a practitioner...”). *See* Rule 2.193(e)(8).
- Request to change correspondence address under § 2.18 (which at (b) requires “a request...must be made in writing, signed by the applicant...”).
See Rule 2.193(e)(9).

Petitioner respectfully requests that the Board reconsider the imposition of such requirements in this case. Furthermore, Petitioner in good faith obtained Respondent’s consent to withdraw this matter, and in good faith reduced such consent to writing and communicated the same to Respondent. Petitioner submits that the writings submitted to the Board are sufficient written consent for the withdrawal of this matter without prejudice. In any event, however, Petitioner does not anticipate it will be able to obtain any more specific writing from Respondent at this stage of the proceeding. Regardless, however, it remains Petitioner’s intent to withdraw its Petition.

Respectfully submitted this the 29th day of August 2016.

/s/ Peter D. Siddoway

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on August 29, 2016, I caused a copy of the foregoing **PETITIONER'S RESPONSE TO THE BOARD'S JULY 28, 2016 ORDER** to be served via e-mail and U.S. First Class Mail, as follows:

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/s/ Peter D. Siddoway

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