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: September 9, 2016

Cancellation No. 92061664

Boston Iced Tea Company, Inc.

v.

BBK Pictures, Inc.

Millicent Canady, Paralegal Specialist:

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 <u>thirty days from the mailing date of this order</u> 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.[1] *See* TBMP §§ 536 and 801.02(a).

Proceedings are otherwise suspended.

[1] Even if the Board discharges an order to show cause under Trademark Rule 2.128(a)(3), dismissal with prejudice for failure to prosecute may be warranted under Trademark Rule 2.132(a) if a plaintiff placed no evidence in the record. In addition, 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.