

**This Opinion is Not a
Precedent of the TTAB**

Mailed: June 30, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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BBK Pictures, Inc.

v.

Boston Iced Tea Company, Inc.

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Opposition No. 91214191

—
Dina Leytes of Griesing Law LLC for BBK Pictures, Inc.

Roger N. Behle Jr. of Foley Bezek Behle & Curtis LLP for Boston Iced Tea
Company, Inc.

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Frances S. Wolfson, Administrative Trademark Judge:

It has come to the Board's attention that on June 2, 2015, Boston Iced Tea Company, Inc. ("Applicant") filed a petition to cancel Reg. No. 4703971, the registration upon which BBK Pictures, Inc. ("Opposer") relies in Opp. No. 91214191.¹ In view thereof, proceedings herein are SUSPENDED.

We note that Applicant did not notify the Board that it filed a petition to cancel Opposer's pleaded registration.² Having elected to proceed under ACR,

¹ *Boston Iced Tea Company, Inc. v. BBK Pictures, Inc.*, Cancellation No. 92061664.

² Although Applicant referenced the opposition proceeding number on the ESTTA filing cover sheet filed with the petition to cancel, the cover sheet cannot substitute for actual notice to the assigned interlocutory attorney or paralegal responsible for docketing papers at the Board.

Applicant knew that the opposition would be docketed for speedy review, and that the Board would consider the evidence and arguments in the case promptly as its aim is to issue a decision within fifty (50) days of the date the case is submitted on brief. Applicant's failure to promptly notify the Board resulted in needless expenditure of limited Board resources. Moreover, the timing of Applicant's petition also raises questions. Applicant waited until well after all briefs were submitted in the opposition to file the petition. The parties are reminded that Trademark Rule 2.106(b)(2)(i) requires prompt pleading of a counterclaim or separate petition once grounds for the counterclaim are learned.³

In the cancellation, Opposer's time to answer or otherwise plead is set for July 21, 2015. When the cancellation proceeding has been finally determined, the interested party should promptly notify the Board in writing of the disposition thereof, and request that further appropriate action be taken in the opposition proceeding. TRADEMARK BOARD MANUAL OF PROCEDURE (TBMP) § 510.02(b) (June 2014).

A copy of this order shall be placed in the record of the cancellation file.

³ See also TBMP § 313.04 ("A defendant who fails to timely plead a compulsory counterclaim cannot avoid the effect of its failure by thereafter asserting the counterclaim grounds in a separate petition to cancel. In such a case, the separate petition will be dismissed, on motion, on the ground that the substance of the petition constitutes a compulsory counterclaim in another proceeding, and that it was not timely asserted.").