UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

gcp

Mailed: August 11, 2011

Concurrent Use No. 94002126

Arcon Associates, Inc.

v.

Archon Group

v.

Archon Group

v.

Arcon Architects, Inc.

v.

Arcon Architectural

v.

ArCON Group

v.

IRT-ARCON

By the Trademark Trial and Appeal Board:

In an order dated September 19, 2005, the Board instituted a concurrent use proceeding between Arcon Associates, Inc. (hereinafter referred to as "Arcon Associates") as concurrent use applicant and the following named excepted users: Archon Group of Irving, Texas; Archon Group of Houston, Texas; Arcon

Architects of League City, Texas; Archon Architectural of Salt Lake City, Utah; ArCon Group of Ridgeland, Mississippi; and IRT-ARCON of Oakland Park, Florida.

The institution order allowed the named excepted users until October 29, 2005 to file their answers to the concurrent use allegations of Arcon Associates. All the named excepted users were required to file an answer. As discussed in the institution order, pursuant to Trademark Rule 2.99(d)(3), if an answer, when required, is not filed, judgment will be entered precluding the specified user from claiming any right more extensive than that acknowledged in the application for concurrent use registration.

The Board notes that excepted user IRT-Arcon filed a motion to extend its time to answer by two weeks on October 25, 2005 which the Board granted on October 26, 2005. On November 15, 2005, excepted user IRT-Arcon filed its answer noting that it has entered into a concurrent use agreement with Arcon Associates. Excepted user IRT-Arcon submitted a copy of the concurrent use agreement with its answer. The Board also notes Arcon Associate's motion to delete the state of Michigan from its application for concurrent use for its services in International Class 37.

None of the other named excepted users, however, filed an answer or sought a timely extension of time to file an answer. Inasmuch as no answer has been received from Archon

Group of Irving, Texas; Archon Group of Houston, Texas; Arcon Architects of League City, Texas; Archon Architectural of Salt Lake City, Utah; or ArCon Group of Ridgeland, Mississippi Winn-Dixie, ***judgment*** is hereby entered against each of them, to the extent that they are precluded from claiming any right more extensive than the rights acknowledged in the concurrent use application of Arcon Associates, application Serial No. **78218850**.

Nevertheless, Arcon Associates retains the burden of proving its entitlement to the registration sought against the acknowledged use by the excepted users in default. That is, Arcon Associates still has to prove that there will be no likelihood of confusion by reason of the concurrent use by Arcon Associates and the defaulted excepted users of their respective marks. *See Precision Tune Inc. v. Precision Auto-Tune Inc.*, 4 USPQ2d 1095 (TTAB 1987). Arcon Associates may prove its entitlement to registration as against the defaulted excepted users by an "ex parte" type of showing; that is, by submitting evidence in affidavit form. *See Precision Tune Inc., supra*. *See also* TBMP § 1107 (3d ed. 2011).

Accordingly, Arcon Associates is allowed until **FORTY-FIVE (45) DAYS** from the mailing date of this order to submit proof of its entitlement to registration. At that time, the Board will make a final determination of Arcon Associate's

right to registration on the basis of the evidence so proffered, as well as on the basis of the submitted concurrent use agreement between Arcon Associates and excepted user IRT-Arcon of Oakland Park, Florida, which will include consideration of Arcon Associate's motion to amend its concurrent use application to delete reference to the state of Michigan in regard to its Class 37 services.

Proceedings otherwise remain suspended.