

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
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Mailed: August 27, 2014

Concurrent Use No. 94002580

Morro Castle Corporation

V.

Morro Castle Cafeteria Restaurant
Corp. dba Morro Castle

Eric McWilliams, Supervisory Paralegal:

A concurrent use proceeding has been instituted between applicant, Morro Castle Corporation, and Morro Castle Cafeteria Restaurant Corp. dba Morro Castle, named as the exception to Morro Castle Corporation claim of exclusive right to use the mark in commerce.¹ Applicant seeks to register the mark MORRO CASTLE for “restaurant services” in International Class 43, for the area comprising the entire United States, except in the limited territory which comprises the corporate boundaries of the cities of Hialeah, Florida and Miami Lakes, Florida.

¹ Morro Castle Cafeteria Restaurant Corp. dba Morro Castle was added to this proceeding as a common law user in view of the abandonment of its application Serial No. 85312784 on March 14, 2012.

In an order issued on October 6, 2013, the Board allowed the above-referenced user until November 15, 2013, to file an answer to the concurrent use allegations of applicant, Morro Castle Corporation.

Pursuant to Trademark Rule 2.99(d)(3), if an answer, when required, is not filed, judgment will be entered precluding the specified user(s) from claiming any right more extensive than that acknowledged in the application for concurrent use registration.

Inasmuch as no answer has been received, judgment is hereby entered against user, Morro Castle Cafeteria Restaurant Corp. dba Morro Castle, to the extent that the user is precluded from claiming any right more extensive than the rights acknowledged in the concurrent use application of Morro Castle Corporation, application Serial No. 85405169.

Nevertheless, applicant still has the burden of proving its entitlement to the registration sought against Morro Castle Cafeteria Restaurant Corp. dba Morro Castle. That is, applicant still has to prove that there will be no likelihood of confusion by reason of the concurrent use by applicant and that user of their respective marks. See *Precision Tune Inc., v. Precision Auto-Tune Inc.*, 4 USPQ2d 1095 (TTAB 1987). Applicant may prove its entitlement to registration as against the defaulting user by an “ex parte” type of showing, that is, by submitting evidence in affidavit form. See *Precision Tune Inc., supra*.

Accordingly applicant, Morro Castle Corporation, is allowed until SIXTY 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 applicant's right to a concurrent use registration on the basis of the evidence so proffered.

Proceedings are otherwise suspended.