

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

dmd

Mailed: September 25, 2007

Opposition No. 91177971

Nike, Inc.

v.

Bluefin Holding Co.

**Robert H. Coggins,
Interlocutory Attorney:**

No answer having been timely received, the Board issued notice of default to applicant, on August 20, 2007, allowing it thirty days in which to show cause why judgment should not be entered against it. Now before the Board are applicant's August 21 and 23, 2007 responses to the notice of default, and the parties' September 12, 2007 filing consisting of (1) a proposed amendment to applicant's application Serial No. 78974983, with opposer's consent, (2) a withdrawal of the opposition without prejudice, contingent upon the entry of the amendment, and (3) a motion to expunge from the public record part of applicant's August 21 and 23, 2007 filings.

Default Discharged

By its responses, applicant contends that the parties were in settlement negotiations and have executed a settlement

agreement. Moreover, applicant submitted a copy of the executed settlement agreement.

After consideration of the representations made in applicant's responses to the notice of default, the Board finds good cause to discharge applicant's default. Fed. R. Civ. P. 55(c); *Fred Hayman Beverly Hills Inc. v. Jacques Bernier Inc.*, 21 USPQ2d 1556 (TTAB 1991).

Motion to Amend

By the proposed amendment applicant seeks to amend the drawing from:



to:



In support thereof, applicant has submitted a substitute drawing. Although the proposed amendment does not materially alter the mark as prohibited by Trademark Rule 2.72(a)(2), and opposer consents to the amendment as required by Trademark Rule 2.133(a), the specimens of record in the involved

application do not support the proposed amendment as required by Trademark Rule 2.72(a)(1). The specimens support use of the mark in the original drawing but not use of the mark in the proposed amendment. Inasmuch as the specimen of record does not support use of the mark in the proposed amendment in accordance with Trademark Rule 2.72(a)(1), the motion to amend is **denied**.

Motion to Withdraw

The contingency for the withdrawal of the opposition not having been met, the proposed withdrawal of the opposition without prejudice is also **denied**.

Motion to Make Confidential

The parties' motion requests that applicant's responses to the Board's August 20, 2007 notice of default, along with the supporting documents filed therewith, be expunged from the public record and replaced with only a copy of applicant's response to the notice of default. In effect, the parties seek to make the settlement agreement submitted by applicant confidential.

Except for materials filed under seal pursuant to a protective order, all pending Board proceeding files and exhibits thereto are available for public inspection. Confidential information filed in the absence of a protective order is not regarded as confidential and will not be kept confidential by the Board. *See Harjo v. Pro-*

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Football, Inc., 50 USQP2d 1705, 1714 (TTAB 1999), *rev'd on other grounds*, 284 F.Supp.2d 96, 98, 68 USPQ2d 1225 (D.D.C. 2003). Inasmuch as applicant submitted the parties' settlement agreement as an attachment to applicant's responses to the notice of default, and there is no evidence of record that the confidential information was filed pursuant to a protective order, the motion to make confidential is **denied**.

Dates

Discovery is open. The close of discovery and trial dates remain as set in the Board's institution order. Applicant is permitted until **thirty days** from the date of this order to file an answer.

News from the TTAB

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:

<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>

http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all

TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>