

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

Baxley

Mailed: June 17, 2008

Opposition No. 91179688

Pinkberry, Inc.

v.

Cotton City

Andrew P. Baxley, Interlocutory Attorney:

On June 13, 2008, opposer filed a consented motion to extend time to respond to the motion to vacate entry of default judgment that applicant filed on April 2, 2008. Notwithstanding applicant's consent to opposer's motion, the Board, in exercising its inherent authority to control the scheduling of cases on its docket, elects to decide opposer's motion on the merits.

The Board notes that default judgment was entered in this case and a notice of abandonment of involved application Serial No. 77025496 was issued on January 18, 2008, i.e., more than two months prior to the filing of applicant's motion,¹ and nearly five months ago. If

¹By contrast, a petition to revive an abandoned application must be filed within two months of the mailing date of the notice of abandonment or within two months of actual knowledge of the abandonment, provided that the applicant did not receive the notice of abandonment, and the applicant was diligent in checking the status of the application. See Trademark Rule 2.66; TMEP Sections 1712 and 1714 (5th ed. 2007).

applicant's motion is granted and the involved intent-to-use application is revived, the examining attorney will be required to conduct a new search for conflicting marks, which could result in the issuance of a new refusal of registration of applicant's mark based on registrations that have issued since the involved application became abandoned. See TMEP Section 718.08 (5th ed. 2007). Further, since the filing of the motion to vacate judgment, the parties sought and been allowed ample opportunity to settle this case. Based on the foregoing, the Board is of the opinion that the extension of more than three months that opposer seeks through its motion would unreasonably delay resolution of applicant's motion.

In view thereof, opposer's motion to extend is granted, but only to the extent that opposer is allowed until July 20, 2008 to so respond.² Applicant's reply brief is due in accordance with Trademark Rules 2.119(c) and 2.127(a).

² The involved application will have been abandoned for roughly six months when the extension period granted by this order expires. The parties are advised that no further extensions of time to respond to applicant's motion will be permitted without a showing of extraordinary circumstances. Further, the Board will not suspend this case for settlement negotiations unless and until the motion to vacate judgment is granted.