

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

WINTER/em

Mailed: September 6, 2011

Opposition No. 91195086

Ira M. Marlowe

v.

Sirius XM Radio Inc.

On April 1, 2011, applicant, Sirius XM Radio Inc., filed a motion for summary judgment against opposer, Ira M. Marlowe, with respect to his claim of likelihood of confusion. It is noted that opposer did not file a response¹ in opposition to applicant's motion for summary judgment. In view thereof, summary judgment is hereby granted as conceded against opposer. See Trademark Rules 2.116(a) and 2.127(a); and Fed. R. Civ. P. 56. Accordingly, the opposition is dismissed with prejudice.²

¹ See Trademark Rule 2.127(e)(1). Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel.

² This decision is interlocutory in nature. Appeal may be taken within two months after the entry of a final decision in the case. See *Copelands' Enterprises Inc. v. CNV Inc.*, 887 F.2d 1065, 12 USPQ2d 1562, 1565 (Fed. Cir. 1989).

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In view of the foregoing, applicant, as counterclaim-plaintiff, is allowed until **THIRTY DAYS** from the mailing date of this order to advise the Board whether it wishes to go forward on its counterclaim, failing which the counterclaim seeking cancellation of U.S. Reg. No. 3779511 will be dismissed with prejudice, based on applicant's loss of interest therein. See TBMP § 606 (3d ed. 2011), citing *Syntex (U.S.A.) Inc. v. E.R. Squibb & Sons Inc.*, 14 USPQ2d 1879, 1880 (TTAB 1990) (opposition dismissed with prejudice; applicant elected to go forward with counterclaim to cancel opposer's registration and had standing to do so). Cf. Trademark Rule 2.114(c).

This proceeding remains otherwise **SUSPENDED**.³

***By the Trademark Trial
and Appeal Board***

³ This proceeding was suspended on April 4, 2011, pending the Board's consideration of applicant's motion for summary judgment. To the extent that July 13, 2011 order reset trial dates even though this proceeding was suspended, said order is vacated. Any inconvenience resulting from that segment of the July 13, 2011, order is regretted.