

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
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October 16, 2019

Opposition No. 91243006

*Dolce Vita Intimates LLC*

*v.*

*Thirdlove, Inc.*

**Michael Webster, Interlocutory Attorney:**

On September 10, 2019, Thirdlove, Inc. (“Applicant/Petitioner”) filed a motion for summary judgment on its abandonment counterclaim. On October 8, 2019, Dolce Vita Intimates LLC (“Opposer/Respondent”) filed its response to the motion and a cross-motion for summary judgment on its likelihood of confusion claim.

Proceedings remain **suspended** pending disposition of the cross-motions for summary judgment. Any paper filed during the pendency of these motions which is not relevant thereto will be given no consideration. *See* Trademark Rule 2.127(d).

**Summary Judgment Briefing Schedule**

The briefing schedule for the cross-motions for summary judgment is as follows:

- 1) Applicant/Petitioner’s reply brief, if any, on its motion for summary judgment is due in accordance with Trademark Rule 2.127(e)(1);

- 2) Applicant/Petitioner's brief in response to Opposer/Respondent's cross-motion is due thirty (30) days from the date of filing of the combined response and cross-motion for summary judgment;
- 3) Opposer/Respondent's reply brief, if necessary, shall be due pursuant to Trademark Rule 2.127(e)(1).

The cross-motions for summary judgment will be decided in due course.

**Improper Filing of "Confidential" Matter**

The Board notes that both parties have filed documents under seal as "confidential" without properly filing a redacted version of the documents for public view. Not all of the information in the documents filed under seal is considered confidential under the Board's standard protective order. *See See* TBMP § 412.01(a) (June 2019). Any party filing a confidential document electronically must also file concurrently a separate redacted version of the confidential filing for public viewing. *See* Trademark Rule 2.126(c), 37 C.F.R. § 2.126(c); TBMP § 502.02(c); *See also In re Violation of Rule 28(d)*, 635 F.3d 1352, 98 USPQ2d 1144 (Fed. Cir. 2011) (parties must confine their confidentiality markings to information covered by protective order).

Thus, the parties are directed to file for the public record a copy of their documents filed as confidential with only the truly confidential portions of the documents redacted, failing which the Board may redesignate the confidential filings as non-confidential in their entirety. *See Swiss Watch Int'l Inc. v. Fed'n of the Swiss Watch Indus.*, 101 USPQ2d 1731, 1736 n.12 (TTAB 2012). The parties may file the redacted

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copies of the confidential documents with their remaining summary judgment briefs.

In the event Opposer/Respondent does not file a reply brief, it must file its redacted copies of the confidential documents within the time scheduled for its reply brief.