

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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ey/wbc

February 16, 2023

Opposition No. 91269619

Top 18 Electronics Corp.

v.

Cool Slim Inc.

By the Trademark Trial and Appeal Board:

Initial Matter

The Board's January 7, 2022 order allowed Opposer time to indicate if it wished to proceed with this cancellation in view of the abandonment in application Serial No. 90322050. 8 TTABVUE 1. However, the January 7, 2022 order incorrectly states that application Serial No. 90322050 was abandoned in its entirety when only International Class 12 was abandoned. *See id.*

The order is hereby amended to clarify that application Serial No. 90322050 now stands abandoned with respect to International Class 12 only. The application remains unchanged with respect to International Classes 9, 20, 22 and 28. Inasmuch as the notice of opposition in this proceeding was filed with respect to all of the classes in the application, including International Class 12, and in view of Opposer's responses on January 11 and 25, 2022 indicating it wishes "to go forward and obtain

judgment” (11 TTABVUE 2), the Board construes this language as Opposer’s wish to obtain to go forward with this proceeding and obtain judgment in regards to the abandoned International Class 12 in addition to International Classes 9, 20, 22 and 28. *See* 9 TTABVUE; 10 TTABVUE.

Failure to File a Brief

The Board granted Opposer’s motion to compel as conceded and reset all remaining dates. 12 TTABVUE 2. Pursuant to that order, Opposer’s trial period expired July 6, 2022 and its trial brief was due December 18, 2022. 12 TTABVUE 2. The time for Opposer to file a brief on the case has expired and no brief on the case is of record. *See* Trademark Rules 2.128(a)(3).¹

In view thereof, Opposer is allowed until **thirty days from the date of this order** to show cause why the Board should not treat the failure to file a brief as a concession of the case, failing which a judgment dismissing the notice of opposition with prejudice will be entered. *See* TBMP §§ 536 and 801.02(a).

Proceedings are otherwise suspended.

¹ Additionally, the time for Opposer to submit evidence in support of its case has expired, and no evidence (other than a copy of its pleaded registrations) is of record. *See* TBMP § 2.132(b).