

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

Mailed: June 20, 2002

Opposition No. 92040268

RENEW RITE, L.L.C.

v.

BARDAHL MANUFACTURING  
CORPORATION

**David Mermelstein, Attorney:**

On April 16, 2002, the Board granted registrant's consent motion to extend. On May 7, 2002, applicant filed a further motion to extend, indicating that the parties were in the process of finalizing an agreement. Applicant's motion to extend is GRANTED.

Now before the Board is the parties' conditional stipulation for the withdrawal of the instant opposition, pursuant to the parties' agreement, a copy of which was attached. Pursuant to the stipulation, opposer's withdrawal of the opposition with prejudice is contingent upon (1) entry of the consent agreement in Application No. 76/137,421, and (2) allowance of that application.<sup>1</sup> The consent agreement is sufficient to resolve this proceeding.

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<sup>1</sup> It is unclear whether by "allowance," the parties mean approval for publication, or registration itself. (The Office's electronic database is unclear as to whether petitioner's

**Opposition No. 92040268**

The flaw in the parties' plan is that if petitioner's '421 application is suspended pending the outcome of this proceeding, that application will not be "allowed" until this proceeding is concluded, and if this proceeding cannot conclude until the application is allowed, neither the application nor this proceeding will ever move forward. It would seem that the more reasonable approach would be to submit the consent agreement to the examining attorney responsible for the '421 application for approval. This matter could be suspended pending the examining attorney's approval of the '421 application for publication, if the parties wish, although it does not seem necessary to do so.<sup>2</sup>

Accordingly, the parties are allowed THIRTY DAYS from the mailing date of this order in which to inform the Board of their desired disposition of this matter, failing which this proceeding will be dismissed with prejudice pursuant to the parties stipulation and agreement, without regard to the conditions placed thereon.

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application is currently based on intent to use, although it does list dates of use for the mark in both classes.)

<sup>2</sup> While the consent agreement is not before the Board as to the '421 application, we note that current law and Office policy require that consent agreements be given "great weight" in a likelihood of confusion analysis. See generally, TMEP § 1207.01(d)(viii)(and cases cited therein). In practice, it is a rare case in which a consent agreement is not conclusive of the issue, so long as it is not a "naked" consent. That said, it is, of course, the decision of the examining attorney in the first instance whether to accept the consent agreement in the matter before him. As stated above, we find only that the consent agreement and the parties' stipulation sufficient to resolve *this* cancellation proceeding.

Opposition No. 92040268

Proceedings are otherwise SUSPENDED.

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