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

Lykos

Mailed: September 15, 2006

Cancellation No.92042473

Narong Deeritdecha

v.

The Jolt Company, Inc.

Angela Lykos, Interlocutory Attorney

On August 28, 2003, petitioner filed a petition to cancel respondent's Registration No. 2231502 for the mark ZONE for "sport drinks, namely, isotonic beverages" in International Class 32.[1] During the course of this proceeding, on December 24, 2005, the registration was canceled for failure to file a Section 8 affidavit of use. On January 17, 2006, petitioner, noting that Registration No. 2231502 was canceled under Section 8 of the Trademark Act, moved to resume proceedings and for judgment sustaining the petition for cancellation.

In light of petitioner's motion for judgment, on January 23, 2006, the Board allowed respondent time to show cause why the cancellation of the registration involved in this proceeding under Section 8 of the Trademark Act should not be deemed to be

[1] The registration was issued on March 16, 1999, alleging December 1, 1997 as the date of first use anywhere and in commerce.

the equivalent of a cancellation by request of respondent without the consent of the adverse party, and should not result in entry of judgment against respondent as provided by Trademark Rules 2.134(a) and 2.134(b).

On February 16, 2006, in response to this order, respondent stated that while it was not currently using the mark contained in the registration at the time the Section 8 affidavit was required to be filed, it did intend to resume such use. Hence, respondent argues that while the registration was appropriately canceled for failure to file the Section 8 affidavit, the registration was not legally abandoned. In support thereof, respondent has submitted the declaration of C.J. Rapp, President of The Jolt Company, Inc., stating that respondent has had an intention to resume use of the mark, that respondent has been actively and continuously attempting to resume sales under its mark, and the respondent has entered into licensing agreements with third parties to resume sales under the mark.

A mark is deemed abandoned "[w]hen its use has been discontinued with intent not to resume such use." 15 U.S.C. § 1127. Based on the circumstances presented in this case, the Board finds that respondent has shown good and sufficient cause why judgment should not be entered in this case. Respondent has stated its present intention to resume use of its mark.

Accordingly, petitioner's motion for judgment is denied.

In view of the foregoing, petitioner is allowed until thirty (30) days from the mailing date of this order to elect whether it wishes to go forward with the cancellation proceeding, or to have the cancellation proceeding dismissed without prejudice as moot. See *C. H. Guenther & Son Inc. v. Whitewing Ranch Co.*, 8 USPQ2d 1450 (TTAB 1988) and TBMP § 602.02(b).

Proceedings are otherwise suspended.