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UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Opposition Nos. 91158276
91158568

Cancellation Nos. 92042927
92042928
92043031

North Atlantic Operating Company, Inc., North Atlantic Trading Company, Inc., and National Tobacco Company

v.

DRL Enterprises, Inc.

Before Kuhlke,[1] Bergsman, and Lykos,
Administrative Trademark Judges.

By the Board:

On July 1, 2016, the Board issued a final judgment in these consolidated proceedings sustaining, inter alia,[2] Opposition Nos. 91158276 and 91158568 against application Serial Nos. 76369872 and 78157851, and granting Cancellation Nos. 92042927, 92042928 and 992043031 to cancel Registration Nos. 1481006, 1331207 and 1328866 on the ground of genericness. On August 26, 2016, pursuant to Section

[1] Judge Kuhlke is substituted for Judge Quinn in view of his retirement from federal service.

[2] The Board's decision also involved other consolidated proceedings that are not subject to the appeal discussed herein.

21(b) of the Trademark Act, DRL Enterprises, Inc. ("DRL") appealed the final judgment in these five proceedings to the United States District Court for the Northern District of Illinois Eastern Division ("District Court") (*DRL Enterprises, Inc. v. NorthAtlantic Operating Company, Inc., North Atlantic Trading Company, Inc. and National Tobacco Company, L.P.,* Case No. 1:16-cv-08384).

On April 30, 2018, the District Court accepted the parties' consent settlement agreement and under Section 21(b) of the Trademark Act adjudged that the Board's determination in Cancellation Nos. 92042927, 92042928 and 92043031, finding the stylization in the marks to be insufficient to create registrable marks, be reversed and vacated and the cancellations be dismissed with prejudice. In addition, the District Court dismissed, with prejudice, the remainder of DRL's appeal, i.e., its appeal of the Opposition proceedings.

In view of the reversal of the Board's finding that the stylization was insufficiently distinctive to create a registrable mark, the Board's July 1, 2016 decision is vacated to the extent that Cancellation Nos. 92042927, 92042928 and 92043031 are dismissed with prejudice and the subject registration Nos. 1481006, 1331207 and 1328866 will not be cancelled.

In view of the dismissal with prejudice of the appeal of Opposition Nos. 91158276 and 91158568, the Board decision stands sustaining those Oppositions against application Serial Nos. 76369872 and 78157851 which stand abandoned.[3]

[3] We note, for clarity, that the Board's decision dismissing the remaining consolidated Opposition proceedings that were not part of this appeal stands as issued.