

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

Mailed: September 25, 2007

Cancellation No.92046084

River West Brands, LLC

v.

Mister Donut of America,  
Inc.

George C. Pologeorgis, Interlocutory Attorney:

On September 4, 2007 (via certificate of mailing), respondent filed a motion, under Fed. R. Civ. P. 26(c), to limit the scope of discovery in this case solely to the issue of whether petitioner has standing to bring this cancellation proceeding, as well as to suspend discovery on all other issues.

Subsequent to the filing of the aforementioned motion, the Board, in its discretion, determined that the issues raised in respondent's motion should be resolved by telephonic conference as permitted by TBMP § 502.06 (2<sup>nd</sup> ed. rev. 2004). The Board contacted the parties to discuss the date and time for holding the phone conference.

The parties agreed to hold a telephone conference at 2:00 p.m. EST on Thursday, September 20, 2007. The

conference was held as scheduled among Brett Tolpin, as counsel for River West Brands, LLC, Stephanie Wade and Gabrielle Roth, as counsel for DD IP Holder LLC, and George C. Pologeorgis, as a Board attorney responsible for resolving interlocutory disputes in this case.

The Board carefully considered the arguments raised by the parties, as well as the supporting correspondence and the record of this case, in coming to a determination regarding the above matter.<sup>1</sup> During the telephone conference, the Board made the following findings and determinations:

**Respondent's Motion To Limit Discovery**

The Board notes that discovery in Board proceedings is not governed by any concept of priority of discovery. See Fed. R. Civ. P. 26(d); *Miss America Pageant v. Petite Productions, Inc.*, 17 USPQ2d 1067, 1070 (TTAB 1990); *Giant Food, Inc. v. Standard Terry Mills, Inc.*, 231 USPQ 626, 632 (TTAB 1986); and TBMP § 403.03 (2d ed. rev. 2004). That is, a party is not entitled the right to receive responses to

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<sup>1</sup>The Board acknowledges that petitioner's counsel emailed to the Board, as well as to respondent's counsel, certain exhibits shortly before the commencement of the telephone conference between the parties and the interlocutory attorney responsible for this case. The Board notes, however, that these exhibits were not properly filed, are not part of the record of this proceeding, and were given no consideration by the Board in its determination herein.

its own discovery requests before it must respond to its adversary's discovery request. Moreover, a party may not, by seeking to limit its own discovery, thereby attempt to restrict the opposing party's discovery in any way. See *Crane Co. v. Shimano Industrial Co., Ltd.*, 184 USPQ 691, 691 (TTAB 1975); TBMP § 402.01 (2d ed. rev. 2004). In other words, it is within the sole discretion of each party to determine the scope of the discovery it will take, and the only restrictions thereon are those specified in Fed. R. Civ. P. 26(b)(1). *Crane Co.*, *supra*, 184 UPSPQ at 691.

In view thereof, respondent's motion to limit the scope of discovery solely to the issue of petitioner's standing in this case and to stay discovery on all other issues is **denied.**

Proceedings remain ongoing. Discovery and trial dates are reset as follows:

DISCOVERY TO CLOSE: **November 23, 2007**

Thirty-day testimony period for party in position of plaintiff to close: **February 21, 2008**

Thirty-day testimony period for party in position of defendant to close: **April 21, 2008**

Fifteen-day rebuttal testimony period for plaintiff to close: **June 5, 2008**

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served

Cancellation No.92046084

on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

The Board thanks counsels for River West Brands, LLC and DD IP Holder LLC for agreeing to participate in the telephone conference.

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