

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

Baxley

Mailed: January 2, 2008

Cancellation No. 92047678

REV Wheels, LLC

v.

American Racing Equipment,  
Inc.

**Andrew P. Baxley, Interlocutory Attorney:**

On December 14, 2007, respondent filed a withdrawal of the motion (filed August 6, 2007) to dismiss the petition to cancel under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted or, in the alternative, to strike certain allegations from the petition to cancel, which the Board, in an August 10, 2007 order, converted into a motion for summary judgment. See TBMP Section 503.04 (2d ed. rev. 2004). Accordingly, that motion will receive no consideration.

The amended motion to dismiss the petition to cancel under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted or, in the alternative, to strike certain allegations from the petition to cancel that petitioner filed on December 14, 2007 is noted. A review of that motion indicates that respondent's twenty-two page argument is prefaced by six pages that include a table of

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contents and a table of authorities. Trademark Rule 2.127(a) states, in relevant part, as follows: "Neither the brief in support of a motion nor the brief in response to a motion shall exceed twenty-five pages in length in its entirety, including table of contents, index of cases, description of the record, statement of the issues, recitation of the facts, argument, and summary."

When the number of pages in the preface are added to the number of pages in the argument, opposer's brief exceeds the twenty-five page limit for briefs in support of, or in opposition to, motions before the Board. The Board will not consider briefs in support of or in opposition to motions that exceed the page limit, nor will the Board dissect a party's brief to bring it within the allowable page limit.<sup>1</sup> See *Saint-Gobain Corp. v. Minnesota Mining and Manufacturing Co.*, 66 USPQ2d 1220, 1222 (TTAB 2003).

Inasmuch as respondent's brief in support of its amended motion to dismiss the petition to cancel under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted or, in the alternative, to strike certain allegations from the petition to cancel exceeds the

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<sup>1</sup> The page limit for briefs on motions is for the Board's convenience and is intended to prevent the filing of unduly long briefs. This limit cannot be waived by action, inaction or consent of the parties. See *Saint-Gobain Corp. v. Minnesota Mining and Manufacturing Co.*, 66 USPQ2d 1220 (TTAB 2003).

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page limit set by Trademark Rule 2.127(a), that motion will receive no consideration.

Proceedings herein are resumed. Respondent is allowed until thirty days from the mailing date set forth in this order to file an answer. Discovery and testimony periods are reset as follows.

**DISCOVERY PERIOD TO CLOSE: May 30, 2008**

Plaintiff's 30-day testimony period to close: **August 28, 2008**

Defendant's 30-day testimony period to close: **October 27, 2008**

Plaintiff's 15-day rebuttal testimony period to close: **December 11, 2008**

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served 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 Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.