

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

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

Faint

Mailed: June 15, 2012

Cancellation No. 92052942

Brainjuicer Limited

v.

Griffin Media Group

**Bucher, Kuhlke and Taylor,  
Administrative Trademark Judges.**

**By the Board:**

This proceeding comes before the Board on petitioner's motion for summary judgment, filed October 14, 2011. The basis for petitioner's motion is that it seeks equitable relief under Section 18 of the Trademark Act by "seeking partial cancellation by restriction or modification of the services" listed in the subject registration. After a suspension requested by the parties for settlement negotiations, respondent filed its response on December 16, 2011.

Petitioner has not pled Section 18 as a ground for relief.<sup>1</sup> The Board may not grant summary judgment on an unpleaded claim. *See Paramount Pictures Corp. v. White*, 31 USPQ2d 1768, 1772 (TTAB 1994); *see also American Express Marketing & Development Corp. v. Gilad Development Corp.*, 94 USPQ2d 1294, 1297 (TTAB 2010) ("the Board will not hesitate to

deny any motion for summary judgment on an unpleaded claim or defense unless the motion for summary judgment is accompanied by an appropriate motion to amend or is withdrawn and refiled with such a motion to amend").

Accordingly, the motion for summary judgment is denied on this unpleaded claim.

Proceedings are resumed. Dates are reset as set out below.

Expert Disclosures Due	6/26/2012
Discovery Closes	7/5/2012
Plaintiff's Pretrial Disclosures Due	8/19/2012
Plaintiff's 30-day Trial Period Ends	10/3/2012
Defendant's Pretrial Disclosures Due	10/18/2012
Defendant's 30-day Trial Period Ends	12/2/2012
Plaintiff's Rebuttal Disclosures Due	12/17/2012
Plaintiff's 15-day Rebuttal Period Ends	1/16/2013

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

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<sup>1</sup> Petitioner has pled a straightforward claim of abandonment.