

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

Mailed: September 29, 2011

Cancellation No. 92054455

Pastry Art Bake Shoppe, LLC

v.

Metabusiness International

**M. Catherine Faint,
Interlocutory Attorney:**

Respondent filed a communication on September 20, 2011.¹ It is presumed that this communication is intended as an answer to the petition to cancel. A reading of this "answer" reveals, however, that it is argumentative and more in the nature of a brief on the case than a responsive pleading to the petition to cancel. As such, it does not comply with Rule 8(b) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Trademark Rule 2.116(a).

Fed. R. Civ. P. 8(b) provides, in part:

A party shall state in short and plain terms the party's defenses to each

¹ Respondent's communication does not indicate proof of service of a copy of same on counsel for petitioner as required by Trademark Rule 2.119 (which is more fully explained later in this order). In order to expedite this matter, a copy of said communication is forwarded herewith to counsel for petitioner, but strict compliance with Trademark Rule 2.119 is required in all further papers filed with the Board.

claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder.

The petition to cancel filed by petitioner herein consists of 28 paragraphs setting forth the basis of petitioner's claim of damage. In accordance with Fed. R. Civ. P. 8(b) it is incumbent on respondent to answer the petition to cancel by admitting or denying the allegations contained in each paragraph. If respondent is without sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, it should so state and this will have the effect of a denial.

In view of the foregoing, respondent is allowed until November 8, 2011 in which to file an answer herein which complies with Fed. R. Civ. P. 8.

As noted earlier in this order, Trademark Rules 2.119(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney, and proof of such service must be

made before the paper will be considered by the Board. Consequently, copies of all papers which respondent may subsequently file in this proceeding, including its answer to the petition to cancel, must be accompanied by a signed statement indicating the date and manner in which such service was made. The statement, whether attached to or appearing on the paper when filed, will be accepted as prima facie proof of service.

It should also be noted that while Patent and Trademark Rule 11.14 permits any person to represent itself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in a cancellation proceeding to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney.

It is recommended that respondent obtain a copy of the latest edition of Title 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice. These rules may be viewed at the USPTO's trademarks page:

<http://www.uspto.gov/main/trademarks.htm>. The Board's main webpage (<http://www.uspto.gov/web/offices/dcom/ttab/>) includes information on amendments to the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR),

Frequently Asked Questions about Board proceedings, and a web link to the Board's manual of procedure (the TBMP).²

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel.

Conferencing, disclosure, discovery and trial dates are reset as follows:

Time to Answer	11/8/2011
Deadline for Discovery Conference	12/8/2011
Discovery Opens	12/8/2011
Initial Disclosures Due	1/7/2012
Expert Disclosures Due	5/6/2012
Discovery Closes	6/5/2012
Plaintiff's Pretrial Disclosures	7/20/2012
Plaintiff's 30-day Trial Period Ends	9/3/2012
Defendant's Pretrial Disclosures	9/18/2012
Defendant's 30-day Trial Period Ends	11/2/2012
Plaintiff's Rebuttal Disclosures	11/17/2012
Plaintiff's 15-day Rebuttal Period Ends	12/17/2012

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing after briefing is not required but will be scheduled upon request of any party, as provided by Trademark Rule 2.129.

² Respondent may also obtain a hard copy of the latest edition of Title 37 of the Code of Federal Regulations available for a fee from the U.S. Government Printing Office on the World Wide Web at <http://bookstore.gpo.gov>.