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

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Mailed: October 10, 2013

Cancellation Nos. 92057460
(Parent)
Cancellation No. 92057479
Cancellation No. 92057493
Cancellation No. 92057541

Hawaiian Airlines, Inc.

v.

Aloha Airlines, Inc.

Elizabeth A. Dunn, Attorney:

On October 8, 2013, at respondent's request, the Board participated in the parties' discovery conference, which was conducted by phone. The participants were Colin Miwa, attorney for petitioner[1], Jennifer Barry, attorney for respondent, and Elizabeth Dunn, attorney for the Board. Respondent requested the Board's participation to facilitate settlement discussions, and petitioner wished to discuss arrangements for disclosure and discovery.

[1] Petitioner attorney Martin Hsia also attended the conference.

STIPULATIONS

The parties stipulated to accept service by email; to copy and forward electronically any responsive documents requested in discovery; and to sign the Board's standard protective agreement and to file it with the Board.

RELATED PROCEEDINGS

Neither party owns a pending application for a related mark. The parties are aware of no related proceedings before the Board or in any court. As set forth in the institution order, the parties must notify the Board promptly in writing if they become parties to another Board proceeding, or a civil action, which involve related marks or issues of law or fact which overlap with this case.

PLEADED CLAIMS

"A mark shall be deemed to be 'abandoned' … [w]hen its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for 3 consecutive years shall be prima facie evidence of abandonment. 'Use' of a mark means the bona fide use of such mark made in the ordinary course of trade, and not made merely to reserve a right in a mark." Trademark Act Sec. 45. "A party claiming that a mark

has been abandoned must show non-use of the mark by the legal owner and no intent by that person or entity to resume use in the reasonably foreseeable future." Quality Candy Shoppes/Buddy Squirrel of Wisconsin Inc. v. Grande Foods, 90 USPQ2d 1389, 1393 (TTAB 2007).

In each petition to cancel, petitioner essentially pleads the same claim that respondent ceased use of its marks ALOHA AIRLINES for airline and incentive award program services, and ALOHA AIRLINES VACATIONS for travel agency services, around March 2008 in connection with respondent's bankruptcy filing; that on February 7, 2011, respondent acquired the registrations from the bankruptcy trustee; that respondent did not resume use of the marks; and that the marks have been abandoned. Respondent's answers, which essentially are the same in all four cancellations, admit that use has not been resumed, but deny that the marks have been abandoned, and assert that respondent has had, and continues to have, an intent to resume use.

SETTLEMENT

Petitioner is not interested in settlement, and the Board does not require the parties to settle. As discussed, because its jurisdiction is limited to registrability

determinations, the Board's role in facilitating settlement is limited. The Board has no authority to enforce settlement provisions regarding the use of marks.

The Board is liberal in granting stipulations to suspend proceedings to allow settlement discussions, and is available to discuss whether prospective amendments to the opposed application or subject registration would be acceptable. Stipulations to suspend the proceeding should be filed promptly because, absent suspension, the Board expects the parties to adhere to the disclosure, discovery, and trial deadlines already set by the Board. Atlanta-Fulton County Zoo Inc. v. De Palma, 45 USPQ2d 1858 (TTAB 1998)(mere existence of settlement negotiations did not justify party's inaction or delay).

ACR (ACCELERATED CASE RESOLUTION) PROCEDURES

While the parties were not willing to agree to ACR (accelerated case resolution) procedures at the conference, the parties may wish to revisit the issue of ACR after they exchange initial discovery responses or proposed stipulations of fact. Hewlett-Packard Development Co. v. Vudu Inc., 92 USPQ2d 1630, 1634 fn 6 (TTAB 2009)("In the alternative, the parties may seek Accelerated Case Resolution (ACR) by stipulating, inter alia, to facts on

which they agree and to procedures that will allow the parties to make their presentations on the merits of the remaining issues without the need for a formal trial procedure."). The assigned attorney is available to discuss the use of ACR procedures to expedite this proceeding. Ballet Tech Foundation Inc. v. Joyce Theater Foundation Inc., 89 USPQ2d 1262, 1266 fn9 (TTAB 2008)("ACR is a procedure akin to summary judgment in which parties can receive a determination of the claims and defenses in their case promptly, but without the uncertainty and delay typically presented by standard summary judgment practice. In order to take advantage of ACR, the parties must stipulate that, in lieu of trial, the Board can resolve any material issues of fact … After the briefs are filed, the Board will issue a decision within fifty days, which will be judicially reviewable as set out in 37 CFR §2.145.").

DISCLOSURES, DISCOVERY AND TRIAL ARRANGEMENTS

Because the parties did not agree on the scope of potential discovery, there was no stipulation to expand initial disclosures. More specifically, respondent rejected the suggestion that expanded disclosures include documentation of respondent's intent to resume use in addition to the outgoing communications by respondent which

respondent has already provided to petitioner. While the parties are free to exchange only those disclosures required by Fed. R. Civ. P. 26(a), the parties are advised that the pleadings define the scope of discovery, and information regarding respondent's intent to resume use is relevant to the pleaded claim of abandonment.

In view petitioner's location in Hawaii, the parties will consider allowing depositions by phone.

Dates remain as set in the Board's order of October 1, 2013.

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