

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact Number: 571-270-8500

wbc

Mailed: March 31, 2016

Cancellation No. 92061096

*Shirley A. Dicko*

*v.*

*Everett and Jones Barbeque –  
Jack London, LLC*

**Wendy Boldt Cohen, Interlocutory Attorney:**

On January 27, 2016, the Board issued a show cause order requesting the parties provide the Board with an explanation as to whether the court actions, which occasioned the suspension of this proceeding, are finally determined and if so, how, if at all, the decisions in these court actions may have a bearing upon this proceeding.

In response thereto,<sup>1</sup> Petitioner requested that the Board provide a “De Novo review and that the court gives no deference to the lower court’s decision and applies the same standard as the district court.” It appears that Petitioner is attempting to appeal the court’s decision<sup>2</sup> with this filing made with the Board. Petitioner is reminded that if she is dissatisfied with a court’s decision, an appeal of that decision should be filed with the appropriate court of appeals, not the Board. The Board is not empowered to review decisions of a court by way of an appeal. *Cf.* TBMP § 510.02(a) (“To the extent that a civil

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<sup>1</sup> No response from Respondent was received by the Board.

<sup>2</sup> In her motion, Petitioner references “prior civil actions and Superior Court rulings.” It is unclear from this language the court decision(s) for which Petitioner seeks an appeal.

action in a federal district court involves issues in common with those in a proceeding before the Board, the decision of the federal district court is often binding upon the Board, while the decision of the Board may not be binding upon the court.”). Rather, the Board is empowered to determine only the right to register. Trademark Act § 17, Trademark Act § 18, Trademark Act § 20, Trademark Act § 24, 15 U.S.C. § 1067, 15 U.S.C. § 1068, 15 U.S.C. § 1070, 15 U.S.C. § 1092. *See Conolty v. Conolty O’Connor NYC LLC*, 111 USPQ2d 1302, 1309 (TTAB 2014); *Blackhorse v. Pro-Football, Inc.*, 111 USPQ2d 1080, 1082-83 (TTAB 2014). In view thereof, to the extent Petitioner is attempting to appeal the court’s decision with the Board, the motion is **denied** and will receive no further consideration.

Notwithstanding the foregoing, the Board has still not been provided an explanation of how the final decision in the civil action in Superior Court of California, styled *Shirley Everett-Dicko v. Everett and Jones Barbeque-Jack London, LLC, et al*, case no. RG12634726 and any related appeals, has a bearing on this Board proceeding.

By this order, the Board requires **each party** to provide it with an explanation as to whether the court actions are finally determined, to specifically point to the final decisions (either by including the pertinent decisions as exhibits to their filings and/or referencing the location of these decisions on the record) and to explain how, if at all, the decisions in these court actions have a bearing upon this proceeding. Furthermore, if the parties seek specific relief based on these court decisions, they must also specify that relief (e.g, dismissal of the petition to cancel, cancellation of the registered mark, etc.) with their explanations.

Petitioner is allowed until **April 10, 2016** to provide the requested explanation to the Board and to specifically indicate whether the court actions are finally determined, to explain whether they have a bearing upon this proceeding and to show cause why the decision in the civil action provides a basis to grant and/or dismiss the petition to cancel. Respondent has until **May 1, 2016** to respond thereto and provide the explanation requested by the Board herein. Any reply is due in accordance with Trademark Rule 2.127(a).

Proceedings remain suspended.