

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

CME

Mailed: April 8, 2016

Cancellation No. 92062714

*Diamond Hong, Inc. & H&C Trading Co.
Inc.*

v.

Zheng Cai d/b/a Tai Chi Green Tea Inc.

By the Trademark Trial and Appeal Board:

This case now comes up on Petitioner's motion for default judgment, filed January 12, 2016.¹

Background

On November 20, 2015, Petitioner filed a petition to cancel Registration No. 4114136 for the mark identified below for "green tea; tea; tea bags":²

¹ All of the parties' filings in this proceeding are single-spaced in contravention of Trademark Rule 2.126(a)(1). Strict compliance with Trademark Rule 2.126 and all other applicable rules and procedures is required in all future filings. Any filing that fails to comply with the Board's rules may be given no consideration.

² Issued March 20, 2012; "Tai Chi Green Tea" disclaimed; "The English translation of 'Tai Chi' in the mark is extremely superior"; the colors green and white are claimed as features of the mark.



In its petition to cancel, Petitioner alleges prior use and registration of the marks identified below for “health care goods, including teas”:



Petition, ¶¶ 2-3. As grounds for cancellation, Petitioner alleges that: (1) use of Applicant’s mark is likely to cause confusion with its prior-used and registered marks, *id.* at ¶¶ 4-7; and (2) “to confuse the public and the examiner, in the English translation of registrant’s trademark application, registrant concealed the real meaning of the wording Tai Chi as a form of martial arts so as to circumvent the petitioner’s mark showing a man engaged in Tai Chi (martial arts) position on top of a Yin-Yang Symbol. Such translation is not only deceptive, [sic] misleading, but also fraudulent.” *Id.* at ¶ 8.

Respondent’s deadline to file an answer to the petition to cancel was January 9, 2016. Prior to that deadline, Respondent filed three substantially similar papers dated December 8, 2015, December 30, 2015 and January 4, 2016. The filings of

December 8, 2015 and December 30, 2015 do not include signed certificates of service, as required by Trademark Rule 2.119; however, Respondent's filing of January 4, 2016 does include a signed certificate of service. Accordingly, the Board considers only Respondent's filing of January 4, 2016.³

Petitioner's Motion

Petitioner argues that Respondent's answer should be stricken as deficient and that default judgment therefore should be entered against him. Petitioner argues that Respondent's answer is deficient because: (1) Respondent "has neither properly admitted or denied each of Petitioner's claims set forth in the Petitioner [sic] for Cancellation," 8 TTABVUE 2; and (2) the answer is "argumentative" and not "presented in an acceptable format permitted by the TTAB Rules."⁴ *Id.* at 2-3. In addition, Petitioner asserts that Respondent has admitted many of the allegations in the petition to cancel by failing to file a proper answer. *Id.* at 3.

In his filing of January 4, 2016, Respondent asserts that the parties' products "are totally different," 7 TTABVUE ¶ 3; that "the yin-yang symbol is the logo of Taoism religion and it has been created for hundreds of years. It is not the registrant's invention or creation, *id* at ¶ 4; he "adopted Tai Chi Graph which represents 'extreme ultimate[,] 'extremely superior' and means the absolute harmony of Yin and Yang (negative and positive) and changed the black part to be green to symbolize our

³ In view hereof, the Board's order of December 21, 2015 is **VACATED**.

⁴ Petitioner also asserts that the answer has not been properly served, but as explained above, the Board considers only Respondent's filing of January 4, 2016, which includes proof of service as required by Trademark Rule 2.119.

product green tea, and the white part symbolizes water. The whole design means ‘the Top Green Tea helps keeping the balance of the body[,]’ *id.*; that his “mark with design so sharply distinguishes itself from any marks ever registered, including the registrant’s[,]” *id.*; that he registered the yin-yang symbol on May 10, 2011 (subject to Registration No. 3958979), *id.*; that “[a]nyone with basic knowledge of [sic] Chinese language will know that ‘Tai Chi’ is an adjective in the first place and simply means ‘the supreme ultimate,’ ‘the very top,’ ‘the extremely superior’ and etc.[,]” *id.* at ¶ 5; and that his “mark is so sharply different from the petitioner’s in terms of general impression, goods, wording and design, there is no [sic] any confusion existed [sic] between our marks and theirs.” *Id.*

Although Respondent’s filing of January 4, 2016 is not in compliance with Fed. R. Civ. P. 8 or Trademark Rule 2.114(b), the substance of Respondent’s filing indicates a good faith attempt to controvert the allegations contained in the petition to cancel, and indicates that Respondent does not admit or concede the grounds state therein. Accordingly, the Board construes Respondent’s filing of January 4, 2016 as a general denial of the salient allegations in the petition to cancel. *See Kallamni v. Kahn*, 101 USPQ2d 1864, 1865 (TTAB 2012) (construing filings “as a general denial of the salient allegations set forth in the amended petition to cancel, as respondent neither admits nor concedes the grounds stated therein”). In view hereof, Petitioner’s motion for default judgment is **MOOT** and will be given no further consideration.

Discovery Conference and Other Dates

In view of both parties' pleadings and other filings in this proceeding, the Board requires that the parties participate in the discovery conference mandated under Fed. R. Civ. P. 26(f) and Trademark Rules 2.120(a)(1) and (a)(2) ***with Board participation***. The interlocutory attorney assigned to this proceeding will contact the parties in due course to set up a mutually convenient time to hold the conference.

Proceedings are resumed and dates are reset as follows:

Deadline for Discovery Conference	5/9/2016
Discovery Opens	5/9/2016
Initial Disclosures Due	6/8/2016
Expert Disclosures Due	10/6/2016
Discovery Closes	11/5/2016
Plaintiff's Pretrial Disclosures Due	12/20/2016
Plaintiff's 30-day Trial Period Ends	2/3/2017
Defendant's Pretrial Disclosures Due	2/18/2017
Defendant's 30-day Trial Period Ends	4/4/2017
Plaintiff's Rebuttal Disclosures Due	4/19/2017
Plaintiff's 15-day Rebuttal Period Ends	5/19/2017

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.
