

TTAB

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

Mailed: April 5, 2017

Cancellation No. 92065445 - 85 373 375

Floor and Decor Outlets of America, Inc.

v.

Millennium Weavers LLC

Amy Matelski, Paralegal Specialist:

The Board sent notice of institution of this proceeding to Respondent on February 21, 2017, but received a returned copy or notification of non-delivery in paper form.¹ See Trademark Rule 2.118.

After investigation, the Board has obtained a different possible address for Respondent, and believes that service can be effected by remailing the notice of institution to the following:

**Millennium Weavers LLC
105 Laurel Creek Rd SE, Suite 11A,
Calhoun, GA, 30701**

Accordingly, the notice of institution is remailed as indicated above.²

¹ The Board encourages trademark owners to exercise due diligence in monitoring the status of their applications and registrations, and their correspondence information, online through the USPTO website and databases accessible from the website. Every party is responsible for ensuring that the Board has its current email and correspondence address. If a party fails to notify the Board of a change of address, with the result that the Board is unable to serve correspondence on the party, default judgment may be entered against the party. See TBMP § 117.07.



U.S. Patent & TMO/ TM Mail Rcpt Dt. #11

Respondent is allowed until forty days from the mailing date of this order in which to file a change of correspondence form through ESTTA informing this Office of its correct email address and/or address. Compliance with Trademark Rule 2.193(3) and Trademark 2.119(a) is required.

If there has been any transfer of interest in the involved registration, Respondent must so advise the Board and submit copies of the appropriate documents. *See* Trademark Act § 10 and Patent and Trademark Rules 3.71 and 3.73.

In view of the circumstances, the time for filing an answer to the petition to cancel is extended to forty days from the mailing date of this order. Notice is hereby given that unless the Respondent listed herein, its assigns or legal representatives, shall enter an appearance, or file an answer or other response to the petition within the time provided in this order, this proceeding may proceed as in the case of default.³

If the parties to this proceeding are also parties to any other Board proceedings involving related marks or, during the pendency of this proceeding, become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings. *See* TBMP § 511.

In accordance with the Trademark Rules of Practice, conference, disclosure, discovery and trial dates are reset as indicated below.

Time to Answer

5/15/2017

² A copy of the notice of opposition/petition to cancel can be viewed using TTABVUE at <http://ttabvue.uspto.gov>.

³ An answer must be filed through ESTTA. *See* Trademark Rule 2.106(b)(1)/2.114(b)(1). Moreover, all submissions to the Board must be made through ESTTA. *See* Trademark Rule 2.126(a). ESTTA is accessible at <http://estta.uspto.gov>.

Deadline for Discovery Conference	6/14/2017
Discovery Opens	6/14/2017
Initial Disclosures Due	7/14/2017
Expert Disclosures Due	11/11/2017
Discovery Closes	12/11/2017
Plaintiff's Pretrial Disclosures Due	1/25/2018
Plaintiff's 30-day Trial Period Ends	3/11/2018
Defendant's Pretrial Disclosures Due	3/26/2018
Defendant's 30-day Trial Period Ends	5/10/2018
Plaintiff's Rebuttal Disclosures Due	5/25/2018
Plaintiff's 15-day Rebuttal Period Ends	6/24/2018
Plaintiff's Opening Brief Due	8/23/2018
Defendant's Brief Due	9/22/2018
Plaintiff's Reply Brief Due	10/7/2018

Generally, the Federal Rules of Evidence apply to Board trials. Trial testimony is taken and introduced out of the presence of the Board during the assigned testimony periods. The parties may stipulate to a wide variety of matters, and many requirements relevant to the trial phase of Board proceedings are set forth in Trademark Rules 2.121 through 2.125. These include pretrial disclosures, matters in evidence, the manner and timing of taking testimony, and the procedures for submitting and serving testimony and other evidence, including affidavits, declarations, deposition transcripts and stipulated evidence. Trial briefs shall be submitted in accordance with Trademark Rules 2.128(a) and (b). Oral argument at final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).

NOTICE: CHANGES TO THE TRADEMARK TRIAL AND APPEAL BOARD (“BOARD”) RULES OF PRACTICE EFFECTIVE JANUARY 14, 2017

The USPTO published a Notice of Final Rulemaking in the Federal Register on October 7 2016, at 81 Fed. Reg. 69950. It sets forth **several** amendments to the rules that govern *inter partes* (oppositions, cancellations, concurrent use) and ex parte appeal proceedings. A correction to the final rule was published on December 12, 2016, at 81 Fed. Reg. 89382.

For complete information, the parties are referred to:

- The Board’s home page on the uspto.gov website: <http://www.uspto.gov/trademarks-application-process/trademark-trial-and-appeal-board-ttab>
- The final rule: <http://www.uspto.gov/sites/default/files/documents/81%20FR%2069950.pdf>
- The correction to the final rule: <http://www.uspto.gov/sites/default/files/documents/81%20FR%2089382.pdf>
- A chart summarizing the affected rules and changes: http://www.uspto.gov/sites/default/files/documents/RulesChart_12_9_16.pdf

For **all** proceedings, including those **already in progress on January 14, 2017**, some of the changes are:

- All pleadings and submissions must be filed through ESTTA. Trademark Rules 2.101, 2.102, 2.106, 2.111, 2.114, 2.121, 2.123, 2.126, 2.190 and 2.191.
- Service of all papers must be made by email, unless otherwise stipulated. Trademark Rule 2.119.
- Response periods are no longer extended by five days for service by first-class mail, Priority Mail Express®, or overnight courier. Trademark Rule 2.119.
- Deadlines for submissions to the Board that are initiated by a date of service are 20 days. Trademark Rule 2.119. Responses to motions for summary judgment remain 30 days. Similarly, deadlines for responses to discovery requests remain 30 days.
- All discovery requests must be served early enough to allow for responses prior to the close of discovery. Trademark Rule 2.120. Duty to supplement discovery responses will continue after the close of discovery.
- Motions to compel initial disclosures must be filed within 30 days after the deadline for serving initial disclosures. Trademark Rule 2.120.
- Motions to compel discovery, motions to test the sufficiency of responses or objections, and motions for summary judgment must be filed prior to the first pretrial disclosure deadline. Trademark Rules 2.120 and 2.127.
- Requests for production and requests for admission, as well as interrogatories, are each limited to 75. Trademark Rule 2.120.
- Testimony may be submitted in the form of an affidavit or declaration. Trademark Rules 2.121, 2.123 and 2.125
- New requirements for the submission of trial evidence and deposition transcripts. Trademark Rules 2.122, 2.123, and 2.125.
- For proceedings **filed on or after January 14, 2017**, in addition to the changes set forth above, the Board’s notice of institution constitutes service of complaints. Trademark Rules 2.105(a) and 2.113(a).

This is only a summary of the significant content of the Final Rule. All parties involved in or contemplating filing a Board proceeding, regardless of the date of commencement of the proceeding, should read the entire Final Rule.

United States Patent and Trademark Office

Commissioner for Trademarks

P.O. Box 1451

Alexandria, VA 22313-1451

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