

ESTTA Tracking number: **ESTTA827190**

Filing date: **06/15/2017**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92065543
Party	Defendant JSC Treats
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Submission	Opposition/Response to Motion
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Attachments	Opposition to Motion for Judgment on the Pleadings.pdf(20425 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

QUINN FOODS LLC,

Petitioner,

v.

JSC TREATS INC.,

Registrant.

Cancellation No. 92065543

OPPOSITION TO PETITIONER'S
MOTION FOR JUDGMENT ON THE
PLEADINGS

Petitioner Quinn Foods LLC (“Quinn Foods”) filed its Motion for Judgment on the Pleadings (“MJOP”) on June 1, 2017, with no Answer from registrant JSC Treats Inc. (“JSC”) yet on file, and prematurely, before the Board designated a time for Quinn Foods to close the pleadings by answering JSC’s apparent counterclaim. Because the law is clear that Quinn Foods cannot file such a motion until “[a]fter the pleadings are closed,” the MJOP was improperly filed and must be denied.

BACKGROUND AND ARGUMENT

Consistent with Federal Rule of Civil Procedure 12(c), Trademark Trial and Appeal Board Manual of Procedure (TBMP) confirms that a motion for judgment on the pleadings may only be filed “[a]fter the pleadings are closed.” TBMP 504.01 *citing* Fed. R. Civ. P. 12(c) (“After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings”); *Land O Lakes, Inc. v. Jim Hugunin*, 88 U.S.P.Q.2d 1957 n1 (2008) (“Judgment on the pleadings does not lie prior to an answer having been filed in the

case”). Quinn Foods filed its Motion for Judgment on the Pleadings (“MJOP”) on June 1, 2017, before JSC had filed an Answer to the Petition for Cancellation, and without having waited for the Board to designate a time for Quinn Foods to answer JSC’s apparent counterclaim pleading.

Quinn Foods filed its Petition for Cancellation in this action on March 6, 2017. On April 19, 2017, JSC filed a document entitled “Opposition to Petitioner’s Motion to Cancel, Petition to Reject Pending Registration of ‘Quinn Snacks,’ Defenses and Counter Petition for Cancellation of QUINN Mark, and Allegation of Fraud” (the “Opposition and Counterclaim Pleading”). The document was not styled as an answer, did not purport to answer the Petition for Cancellation, and contains neither admissions nor denials of the allegations in the Petition for Cancellation. *See* 37 CFR § 2.114(b)(1) (“An answer shall state in short and plain terms the respondent’s defenses to each claim asserted and shall admit or deny the averments upon which the petitioner relies”); MJOP at 7 (“Registrant did not specifically or even generally deny any of the allegations set forth in the Petition”). Accordingly, at the time Quinn Foods filed its MJOP, the pleadings remained open because JSC had yet to file an answer.

The Opposition and Counterclaim Pleading includes a portion styled as a “Counter Petition for Cancellation of QUINN Mark,” along with payment of the counterclaim fee, so may be interpreted as asserting a counterclaim, requiring an answer. As detailed in JSC’s concurrently filed Notice of Withdrawal of Opposition and Counterclaim Pleading and Motion to Strike Answer to Counterclaim (“Motion to Strike”), however, Quinn Foods was not permitted to file an answer to any JSC counterclaim outside of the Board-designated period for a response. *See* 37 CFR § 2.114(b)(3)(iii) (“A time, not less than thirty days, will be designated within which an answer to the counterclaim must be filed.”); TBMP § 311.03 (noting that 37 CFR § 2.114(b) “require[s] that an answer to a counterclaim be filed, within the time designated by the Board”).

Here, Quinn Foods filed its Answer to Counterclaim on June 1, 2017, before the Board had designated a time to respond to any JSC counterclaim, so that pleading should be stricken as untimely and immaterial to the proceeding. *See* Motion to Strike at 2. For this reason too, the pleadings remained open at the time Quinn Foods filed the MJOP.

CONCLUSION

The pleadings in this proceeding were by no means “closed” when Quinn Foods filed its Motion for Judgment on the Pleadings. On this basis alone,¹ the motion must be denied.

DATED this 14th day of June, 2017.

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¹ To the extent the Board disagrees with JSC’s analysis of the status of the pleadings in the case, JSC would be pleased to provide argument going to the substance of the MJOP. For instance, although Quinn Foods represents, “Both Petitioner and Registrant state that the parties’ respective marks so closely resemble one another as to be likely to cause confusion,” MJOP at 8, contrary to Quinn Foods’ sweeping argument, the Opposition and Counterclaim Pleading states that the parties coexisted peacefully for years before Quinn Foods expanded out of the salty snacks market. *See also Accurso v. Infra-Red Services, Inc.*, 23 F. Supp. 3d 494 (E.D. Pa. 2014) (district court should permit curative amendment of pleadings before dismissing complaint with prejudice unless doing so would be inequitable or futile).

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing Opposition to Petitioner's Motion for Judgment on the Pleadings by forwarding said copy on June 14, 2017 via email to:

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DATED this 14th day of June, 2017.

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