

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
General Email: TTABInfo@uspto.gov

CME/ra

October 4, 2018

Cancellation No. 92066399

Migros-Genossenschafts-Bund

v.

InSpa Corporation and CMH Partners LLC

Christen M. English, Interlocutory Attorney:

Respondent's Registration No. 3381209 involved in this proceeding was cancelled on February 13, 2018¹ because Respondents failed to file an affidavit or declaration of use under Section 8 of the Trademark Act and to renew the registration under Section 9 of the Trademark Act prior to the expiration of the six-month grace periods available under Trademark Rules 2.160(a)(3) and 2.182, 37 C.F.R. §§ 2.160(a)(3) and 2.182.

Respondents are allowed until **twenty days** from the mailing date of this order to show cause why such cancellation should not be deemed to be the equivalent of a cancellation by request of Respondents without the consent of Petitioner, and should not result in entry of judgment against Respondents as provided by Trademark Rule

¹ The Office did not take the ministerial function of entering the cancellation into the Office's database until September 14, 2018, but the registration technically expired on the day after its tenth anniversary – February 13, 2018. *Cf. Land O Lakes, Inc. v. Hugunin*, 88 USPQ2d 1957, 1959 (TTAB 2008).

2.134(a). In the absence of a showing of good and sufficient cause, judgment may be entered against Respondents. Trademark Rule 2.134(b); *see also* Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) § 535.

If, in response to this order, Respondents submit a showing that the failure to file an affidavit or declaration of use under Section 8 of the Trademark Act and to renew the registration under Section 9 of the Trademark Act was the result of inadvertence or mistake, judgment will not be entered against them. In that case, Petitioner will be allowed time to elect whether it wishes to go forward with the cancellation proceeding, or to have the cancellation proceeding dismissed without prejudice as moot.² *See Marshall Field & Co. v. Mrs. Fields Cookies*, 11 USPQ2d 1154, 1156 (TTAB 1989), and TBMP § 602.02(b).

Proceedings are suspended pending Respondents’ response to this order.

² Respondent’s consented motion to amend its registration, filed September 11, 2018, will be given no consideration because a cancelled registration cannot be amended.