

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

December 20, 2022

Cancellation No. 92074565

MD Audio Engineering, Inc.

v.

Murvin D. Persaud

Michael Webster, Managing Interlocutory Attorney:

On August 3, 2022, the Board granted the petition to cancel the subject registration in this proceeding and entered judgment against Respondent. On September 7, 2022, Respondent filed a submission with the Board requesting that the USPTO “reconsider the cancellation of trademark MD AUDIO....” 19 TTABVUE 2.¹ On October 14, 2022 and again on December 16, 2022, Respondent filed a submission with the heading “Motion for relief from judgment.” 23 TTAVUE 2, 24 TTABVUE 2. None of the foregoing filings include proof of service upon Petitioner.

Trademark Rule 2.119(a), 37 C.F.R. § 2.119(a), states that every submission filed in an *inter partes* proceeding must be served upon the other party or parties, and proof of such service must be made before the submission will be considered. *See* TBMP § 113.02. The Board informed the parties of the rules governing service and

¹ The submission and the evidence filed in connection therewith, 20, 21, 22 TTABVUE, were filed under seal.

the service requirement in the notice of institution. 1 TTABVUE 2. Trademark Rule 2.119(b) sets forth the manner of service.

The Board also notes that, to the extent Respondent intended the September 7, 2022 submission as a motion under Trademark Rule 2.129(c), 37 C.F.R. § 2.129(c), for reconsideration of the Board's order granting the petition to cancel, Respondent does not argue that the Board erred in reaching the decision and the motion was not filed within one month of the date of the decision. *See* Trademark Rule 2.129(c); *see also* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 543 (2022). Further, although the filing includes the heading "Notice of Appeal," the submission does not comply with the requirements for filing a notice of an appeal to the U.S. Court of Appeals for the Federal Circuit under Trademark Rule 2.145(a), 37 C.F.R. § 2.145(a). In view of the foregoing, the September 7, 2022 filing and the exhibits submitted therewith **will be given no consideration.**

However, despite Respondent's failure to include proof of service, the Board will consider Respondent's October 14, 2022 motion for relief from judgment. The unnecessary duplicate filing and exhibits submitted on December 16, 2022 will not be considered.² In order to expedite matters, and because the interests of the parties would be served thereby, the Board hereby serves the October 14, 2022 submission that does not include proof of service. The submission may be accessed via TTABVUE at: <https://ttabvue.uspto.gov/ttabvue/>. 23 TTABVUE. The Board may decline to read

² The exhibits primarily relate to the merits of the claim in the petition to cancel which is not relevant to a motion for relief from judgment under Fed. R. Civ. P. 60(b). *See* TBMP § 544.

or consider any future submission filed by Respondent in this proceeding which does not include proof of service.

In view of the Board's decision to affect service of the motion, Petitioner is allowed **20 DAYS** from the date of this order to file its response, if any, to the motion for relief from judgment. A reply brief, if necessary, is due in accordance with Trademark Rule 2.127(a); TBMP § 502.02. The motion will be decided in due course.

Revocation of Attorney

Because Respondent states that his attorney, Carlton Talbot of Talbot Legal Co., is no longer affiliated with the case and that all communications should be issued to Respondent at his correspondence address, 23 TTABVUE 2, the correspondence address of record for Respondent has been changed to reflect the request for removal of Respondent's attorney from the proceeding.

Proof of Service

Respondent is reminded that all future submissions filed in this proceeding must be accompanied by a statement, signed by the attorney or other authorized representative, attached to or appearing on the original submission when filed, clearly stating the date and manner in which service was made, the name of each party or person upon whom service was made, and the email address or address. *See* TBMP § 113.03. Service must be made by email unless otherwise stipulated, or unless the filing party has satisfied the requirements for another method of service as set forth in Trademark Rule 2.119(b). *See also* TBMP § 113.04. The statement will be

accepted as prima facie proof of service, must be signed and dated, and should take the form of a Certificate of Service as follows:

I hereby certify that a true and complete copy of the foregoing (insert title of submission) has been served on (insert name of opposing counsel or party) by forwarding said copy on (insert date of mailing), via email (or insert other appropriate method of delivery) to: (set out name, address, and email address of opposing counsel or party).

Signature _____

Date _____

It is recommended that any pro se party be familiar with the latest edition of Chapter 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice. Parties should also be familiar with the Trademark Trial and Appeal Board Manual of Procedure (TBMP), available at <https://www.uspto.gov/ttab>, the TTABVUE system for viewing the record for all Board proceedings, available at <https://ttabvue.uspto.gov/ttabvue/>, and the Standard Protective Order, available at <https://www.uspto.gov/trademarks-application-process/appealing-trademark-decisions/standard-documents-and-guidelines-0>.