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October 20, 2026

Cancellation Nos. 92077680 (parent) and 92078922

O&M Halyard, Inc.

v.

Guidepoint Global, LLC

By the Trademark Trial and Appeal Board:

This proceeding comes before the Board for consideration of Petitioner's and Respondent's Joint Motion to Vacate the Board's July 25, 2025 Final Decision pursuant to Fed. R. Civ. P. 60(b).[1]

I. Background

On July 25, 2025, the Board issued a final decision in the consolidated cancellation proceeding (i) granting Respondent's counterclaim for cancellation of Petitioner's Registration Nos. 5739878 and 6357539 on the basis of non-ownership, and (ii) denying Petitioner's petitions to cancel Respondent's Registration Nos. 6285787 and 6231233 on the basis of priority and likelihood of confusion (hereinafter, the "Final

[1] 103 TTABVUE. In the motion the parties refer to defendant Guidepoint Global, LLC as "Registrant" or "Guidepoint". To be consistent with the nomenclature used in the Board's July 25, 2025 final decision we refer herein to Guidepoint Global, LLC as "Respondent." *See* 100 TTABVUE 4.

Decision").[2] The Board decided the cancellation after full trial, briefing, and an oral hearing.[3]

On September 18, 2025, pursuant to Section 21(b) of the Trademark Act, 15 U.S.C. § 1071(b), Petitioner sought review of the Board's Final Decision by means of a civil action filed in U.S. District Court for the Eastern District of Virginia.[4]

On May 19, 2026 the district court signed and entered the parties' Joint Stipulation to dismiss the civil action which states:

> WHEREAS, the Parties have reached a settlement resolving the outstanding issues in the above-captioned litigation.
>
> WHEREAS, the Parties have agreed to dismissal of all claims and counterclaims asserted in this action on the basis described below:
>
> Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), the Parties hereby jointly stipulate to the dismissal of all claims and counterclaims by the Parties against one another, with prejudice, and with each party bearing its own attorneys' fees and costs.[5]

The parties' motion states that as part of their resolution of the civil action Respondent "agreed that Petitioner is the owner of Registration Nos. 5739878 and 6357539, and Petitioner agreed that there is no likelihood of confusion between

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[2] 100 TTABVUE.

[3] *Id.* at 5, 8-10.

[4] 101 TTABVUE. Petitioner asserted additional claims for trademark infringement, counterfeiting, dilution, and unfair competition under federal and Virginia law. *See O&M Halyard, Inc., et. al. v. Guidepoint Global LLC*, No. 1:25-cv-01568 (EDVA), Complaint, ECF No. 1 ("Civil Action"). Owens & Minor Distribution, Inc. joined Petitioner in the civil action. *Id.*

[5] 102 TTABVUE.

[Respondent's] use of its relevant trademarks and Petitioner's asserted trademarks."[6] The parties request "the Board vacate the key holdings of the July 25, 2025 Final Decision wherein it: (1) granted [Respondent's] counterclaim cancelling Petitioner's Registration Nos. 5739878 and 6357539 on the basis of non-ownership; and (2) denied Petitioner's petition to cancel [Respondent's] Registration Nos. 6285787 and 6231233 based on priority and a likelihood of confusion."[7]

II. Analysis

Petitioner and Respondent assert that "[t]he district court's dismissal with prejudice of the *de novo* review of this case renders the underlying TTAB proceeding moot" and as such, "the Board's Final Decision is properly vacated pursuant to Rule 60(b)."[8] They do not, however, disclose which subject of Rule 60(b)—there are six—under which the motion falls. From what little the motion and record here discloses, it appears that it likely is under Fed. R. Civ. P. 60(b)(6), which provides for relief from a judgment or final order for "any other reason that justifies relief."[9] "Relief from judgment under Fed. R. Civ. P. 60(b) is an extraordinary remedy to be granted in the court's discretion only in exceptional circumstances. The determination of whether to grant a Fed. R. Civ. P. 60(b) motion is a matter largely within the discretion of . . .

[6] 103 TTABVUE 4.

[7] *Id.* at 6.

[8] *Id.* at 4-5.

[9] The parties specifically cite to the "any other reason that justifies relief" in Fed. R. Civ. P. 60(b)(6) in their motion, and do not identify any other ground from Fed. R. Civ. P. 60(b) as the basis for their request for vacatur. *See id.* at 4.

the Board." *Djeredjian v. Kashi Co.*, No. 92019384, 1991 TTAB LEXIS 61, at *5-6 (TTAB 1991).

"A case becomes moot . . . when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013). The parties' settlement has mooted their appeal to the district court of the Final Order as there are no longer any live issues. However, as the Supreme Court has held in the context of a review under 28 U.S.C. § 2106, "mootness by reason of settlement does not justify vacatur of a judgment under review" absent "exceptional circumstances." *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 29 (1994); *see also Tafas v. Kappos*, 586 F.3d 1369, 1371 (Fed. Cir. 2009) ("when a party procures the conditions that lead to a case becoming moot [such as a settlement], that party should not be able to obtain an order vacating the lower court decision that was adverse to that party") (citing *Bancorp*, 513 U.S. at 25). The same principle applies equally in Board proceedings. *See* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 544 (2026) ("That the parties have agreed to vacatur does not, by itself, warrant vacatur of a Board decision on the substantive merits of a dispute under the Board's general equitable authority.") (citing *Bancorp*, 513 U.S. at 29); *cf Valero Terrestrial Corp. v. Paige*, 211 F.3d 112, 121 (4th Cir. 2000) (holding that "the *Bancorp* considerations that are relevant to appellate vacatur for

mootness are also relevant to, and likewise largely determinative of, a district court's vacatur decision for mootness under Rule 60(b)(6)").[10]

The Supreme Court explained in *Bancorp*, 513 U.S. at 27:

> Congress has prescribed a primary route, by appeal as of right and certiorari, through which parties may seek relief from the legal consequences of judicial judgments. To allow a party who steps off the statutory path to employ the secondary remedy of vacatur as a refined form of collateral attack on the judgment would -- quite apart from any considerations of fairness to the parties -- disturb the orderly operation of the federal judicial system.

The same reasoning holds true for Board proceedings, and the prescribed routes of appeal for final decisions.

Section 21 of the Trademark Act, 15 U.S.C. § 1071 prescribes two mutually exclusive options through which a party dissatisfied with a Board decision may seek relief, either an appeal to the Federal Circuit (decided on the record before the Board),

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[10] The cases the parties rely on in their motion are inapposite. *See* 103 TTABVUE 4-5. One case concerns mootness "from external causes over which the parties have no control," which is treated differently than mootness by settlement. *Tafas*, 586 F.3d at 1371 (citing *Bancorp*, 513 U.S. at 25). *See Hirschfeld v. Bureau of Alcohol, Firearms, Tobacco & Explosives*, 14 F.4th 322, 325 (4th Cir. 2021) (plaintiff's challenge to constitutionality of federal laws prohibiting sales of handguns to individuals 18-20 years old became moot when plaintiff turned 21). The parties' reliance on the Supreme Court's decision in *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39-40 (1950) is particularly distinguishable because the Supreme Court explained in *Bancorp* that "[t]he principles that have always been implicit in our treatment of moot cases counsel against extending *Munsingwear* to settlement." *Bancorp*, 513 U.S. at 24. And *U.S. Philips Corp. v. Windmere Corp.*, 971 F.2d 728, 731 (Fed. Cir. 1992) (and the cases cited therein) were decided two or more years before the Supreme Court issued its decision regarding mootness by settlement not justifying vacatur in *Bancorp*.

The parties also cite to the 2008 edition of *Federal Practice & Procedure*. 103 TTABVUE 4-5. But the first quoted statement is in relation to voluntary dismissals without prejudice, where here the dismissal was with prejudice, and the quoted statement does not otherwise address mootness by settlement or motions to vacate. *See* 9 C. Wright & A. Miller, *Fed. Prac. & Proc. Civ*. § 2367 (4th ed. June 2026 update). The second quoted statement does not appear in the cited section in the current fourth edition of the treatise. *See id.*

or by filing a civil action in a United States District Court. *See* TBMP § 901.01 ("Avenues of Appeal"); *Snyder's-Lance, Inc. v. Frito-Lay N. Am., Inc.*, 991 F.3d 512, 515 (4th Cir. 2021) ("Under the Lanham Act, [plaintiffs] could seek review of the Trademark Board's 2014 decision in either the Federal Circuit (pursuant to 15 U.S.C. § 1071(a)) or a district court (pursuant to § 1071(b)).").

When a party seeks review of a final decision of the Board by filing a civil action:

> The court may adjudge that an applicant is entitled to a registration upon the application involved, that a registration involved should be cancelled, or such other matter as the issues in the proceeding require, as the facts in the case may appear. Such adjudication shall authorize the Director to take any necessary action, upon compliance with the requirements of law.

15 U.S.C. § 1071(b)(1). The Fourth Circuit Court of Appeals explains that:

> In a § 1071(b) action, the district court reviews the record de novo and acts as the finder of fact. The district court has authority independent of the PTO to grant or cancel registrations and to decide any related matters such as infringement and unfair competition claims. . . . [T]he parties have an unrestricted right to submit further evidence as long as it is admissible under the Federal Rules of Evidence and Civil Procedure. . . . [W]here new evidence is submitted, de novo review of the entire record is required[.]

Swatch AG v. Beehive Wholesale, Ltd. Liab. Co., 739 F.3d 150, 155-56 (4th Cir. 2014) (citations omitted).

As the parties recognize in their motion, and as Petitioner explicitly stated in its appeal to the district court,[11] Petitioner sought in the civil action to present "new

[11] Civil Action, ECF No. 1, Complaint at 17 ¶ 68 ("additional, new evidence exists that proves even further [Petitioner's] ownership and supports a finding that a likelihood of confusion

evidence relevant to the key issues of the dispute."[12] However, the Joint Stipulation entered by the district court does not reference any new evidence, make any findings based on the district court's *de novo* review of any evidence, and also does not "adjudge" anything regarding either of the party's registrations, or the issues decided in the Final Decision.[13] The parties neither provide us with any such new evidence nor point to any circumstances beyond the existence of a settlement agreement, the contents of which are not before us, to support their request for vacatur. But as the Supreme Court explained, settlement alone does not justify vacatur and the parties do not identify any "exceptional circumstances" that would warrant vacating the Final Decision.

Reviewing the two "key holdings" of the Final Decision the parties specifically seek to vacate also does not reveal support for the parties' vacatur request.[14] First, the

exists . . ."); *see also* Civil Action, ECF No. 12, First Amended Complaint at 22 ¶ 78 ("additional, new evidence exists that proves even further [Petitioner's] ownership and licensing control over the QSIGHT Trademarks and supports a finding that a likelihood of confusion exists . . .").

[12] 103 TTABVUE 3 (Petitioner "filed a civil action with the United States District Court for the Eastern District of Virginia appealing the Board's Final Decision pursuant to 15 U.S.C. § 1071(b)(1) and 37 CFR § 2.145, requesting a *de novo* review on the basis that Petitioner had new evidence relevant to the key issues of the dispute."); *see also id.* at 5 ("Petitioner's complaint specifically sought a *de novo* review based on the presentation of new evidence to the key issues of the case[.]").

[13] In entering the Joint Stipulation, the district court also did not remand the case to the Board to consider vacatur, it only dismissed all claims with prejudice. The Federal Circuit has held that the Board should decide motions to vacate its decisions. *See MidAmerican Energy Co. v. Mid-America Energy Resources, Inc.*, 250 F.3d 754 (Fed. Cir. 2000) (table) ("The parties' agreement does not render vacatur by this court appropriate. . . . The proper course is to remand the case so that the TTAB can consider MidAmerican's request for vacatur and dismissal of the opposition.") (citing *Bancorp*, 513 U.S. at 29).

[14] 103 TTABVUE 6.

parties seek to vacate the Board's grant of Respondent's "counterclaim cancelling Petitioner's Registration Nos. 5739878 and 6357539 on the basis of non-ownership."[15] Even accepting the parties' representation that "[a]s part of th[e] resolution [of the civil action], [Respondent] agreed that Petitioner is the owner of Registration Nos. 5739878 and 6357539,"[16] does not provide a basis to vacate the Final Decision. As discussed in the Final Decision,[17] the Federal Circuit recognizes, "registration by one who did not own the mark at the time of filing renders the underlying application void *ab initio*." *Lyons v. Am. Coll. of Veterinary Sports Med. & Rehab.*, 859 F.3d 1023, 1027 (Fed. Cir. 2017). Based on Petitioner's own documents and testimony the Board found "that on the filing date of the applications underlying Petitioner's Registration Nos. 5739878 and 6357539, Petitioner did not own the mark QSIGHT, and as such Petitioner's underlying applications are void *ab initio* and the resulting registrations are invalid."[18] Respondent's agreement otherwise does not alter this evidence,[19] no new evidence has been identified or adjudged that changes this determination, and accordingly there is no basis to vacate this holding.

[15] 103 TTABVUE 6.

[16] *Id.* at 5.

[17] 100 TTABVUE 12-13.

[18] *Id.* at 25; *see also id.* at 12-25.

[19] Indeed, Respondent's representation as presented in the motion appears to be limited to Petitioner's current ownership of the registrations, *see* 103 TTABVUE 5 ("As part of that resolution, Registrant agreed that Petitioner is the owner of Registration Nos. 5739878 and 6357539 . . . ."), and does not establish that Petitioner was the owner of the marks at the time Petitioner filed the underlying applications, which was the issue the Board adjudicated at trial.

Second, the parties seek to vacate the Board's denial of "Petitioner's petition to cancel [Respondent's] Registration Nos. 6285787 and 6231233 based on priority and a likelihood of confusion."[20] The parties represent in their motion that "Petitioner agreed that there is no likelihood of confusion between [Respondent's] use of its relevant trademarks with its listed goods and related services and Petitioner's asserted trademarks with its listed goods and related services."[21] But again, even if we accept this representation, it is entirely consistent with what the Board decided in the Final Decision. Namely, the Board found based on the evidence of record and the parties' arguments that, "Petitioner has failed to prove by a preponderance of the evidence that Respondent's marks will be likely to be confused with Petitioner's mark."[22] Accordingly, the parties also fail to identify any basis to vacate this holding.

The parties also assert granting the motion to vacate would not harm the public interest because the Final Decision is not precedential, and the dismissal with prejudice of the civil action "support[s] the public's interest in preclusion and putting an end to years-long litigation between these parties."[23] They further claim that "neither party will suffer hardship from the vacatur of the Final Decision, as the parties will co-exist in the market, cover their own costs of the litigation, and abstain from further litigation."[24]

[20] 103 TTABVUE 6.

[21] *Id.* at 5.

[22] 100 TTABVUE 77.

[23] 103 TTABVUE 5-6.

[24] *Id.* at 6.

However, the parties' arguments overlook a key public interest. Cancellations, like "[o]ppositions[,] protect the public interest in the integrity of the federal trademark register by providing a means to consider and decide the right to registration, a matter of public interest." *Mt. Gateway Order, Inc. v. Va. Cmty. Coll. Sys.*, No. 91283412, 2024 TTAB LEXIS 209, at *14 (TTAB 2024). As the Board has explained in the context of the availability of affirmative defenses, "it is within the public interest . . . to cancel registrations which are void ab initio because of th[e] disability of the registered mark as of the time the application was filed." *Performance Open Wheel Racing, Inc. v. United States Auto Club Inc.*, No. 91229632, 2019 TTAB LEXIS 137, at *33 (TTAB 2019); *see also Mt. Gateway Order*, 2024 TTAB LEXIS 209, at *14 ("'it is within the public interest to have registrations which are void ab initio stricken from the register and . . . this interest or concern cannot be waived by the inaction of any single person or concern no matter how long the delay persists'") (citation omitted) (quoting *W.D. Byron & Sons, Inc. v. Stein Bros. Mfg. Co.*, No. 92008112, 1965 TTAB LEXIS 78, at *10 (TTAB 1965), *aff'd*, 377 F.2d 1001 (CCPA 1967)); *cf Ohio Willow Wood Co. v. Thermo-Ply, Inc.*, 629 F.3d 1374, 1376 (Fed. Cir. 2011) (Moore, J., concurring) (concurring in remand to district court to consider motion to vacate and recognizing that "[o]nly in 'exceptional circumstances' should a district court grant vacatur at the request of the litigants" and "[i]n a patent case, especially where a patent has been invalidated, the public interest is overwhelming").

We find here that the public interest is substantial in protecting the integrity of the federal trademark register and cancelling Petitioner's invalid trademark

registrations that its documents and testimony established are void *ab initio*. None of the interests articulated by the parties outweigh this substantial public interest.

Accordingly, Petitioner's and Respondent's joint motion to vacate the Final Decision is **denied**.[25]

[25] If Petitioner is the current owner of the marks, then Petitioner has the right, of course, to file new applications identifying itself as the owner.