THIS ORDER IS NOT A PRECEDENT OF THE TTAB

Bukrinsky

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

October 5, 2023

Cancellation No. 92078494

My Own Meals, Inc.

v.

Alimento Agro Foods Private Limited

Before Kuhlke, Pologeorgis, and Allard,
Administrative Trademark Judges.

By the Board:

This proceeding comes before the Board on Respondent's motion, filed July 7, 2023, for relief from default judgment. The motion is fully briefed.

We have considered the parties' briefs, address the record only to the extent necessary to set forth the Board's analysis and findings, and do not repeat or address all of the parties' arguments. *Guess? IP Holder LP v. Knowluxe LLC*, 116 USPQ2d 2018, 2019 (TTAB 2015).

I. Background

Respondent is the record owner of Registration No. 6003612 for the mark M.O.M. MEAL OF THE MOMENT and Design, shown below, for food products in International Class 30.[1]

Petitioner filed a petition to cancel on November 17, 2021, alleging abandonment by nonuse. 1 TTABVUE. In support of its entitlement to a statutory cause of action, Petitioner alleged that Respondent's registration is blocking its own application, Serial No. 88509153 for the mark M.O.M. for various food products and related services in International Classes 29, 30, 35, 39, and 43, from registering. *Id.* at 4.

Respondent's answer to the petition to cancel was due January 2, 2022. *See* 2 TTABVUE 3. Inasmuch as Respondent did not file an answer or seek an extension of time in which to do so, the Board issued a notice of default under Fed. R. Civ. P. 55(a). 4 TTABVUE. Respondent did not respond to the notice of default within the allowed time. Accordingly, on March 10, 2022, the Board granted the petition to cancel and entered default judgment against Respondent under Fed. R. Civ. P. 55(b). 5

[1] The underlying intent-to-use application was filed on December 4, 2018 pursuant to Trademark Act Section 1(b), 15 U.S.C. § 1051(b). The registration issued on March 3, 2020. According to the registration, "[t]he mark consists of the letters 'M.O.M' written in stylized letters in which a heart design and several dots are found inside the 'O' letter. The phrase 'MEAL OF THE MOMENT' is found in smaller size on top of the 'O' letter." Color is not claimed as a feature of the mark.

TTABVUE. Thereafter, Respondent's registration was cancelled by Commissioner Order. 8 TTABVUE.

Over a year after entry of judgment, on July 7, 2023, Respondent's current counsel filed a notice of appearance (11 TTABVUE) and change of correspondence address (10 TTABVUE),[2] and the motion for relief from judgment (12 TTABVUE).

II. Preliminary Matter

Respondent's motion does not include proof of service on Petitioner. *See* 12 TTABVUE. Trademark Rules 2.119(a) and (b) require that every submission filed in a proceeding before the Board must be served upon the other party or parties, and proper proof of such service must be made before the submission will be considered by the Board. 37 C.F.R. § 2.119(a) and (b).

In this instance, despite lack of service, Petitioner filed a timely response to Respondent's motion. 13 TTABVUE. Accordingly, it is evident that Petitioner had notice of Respondent's filing, and we exercise our discretion to consider Respondent's motion on its merits. *See Coffee Studio LLC v. Reign LLC*, 129 USPQ2d 1480, 1482 n.7 (TTAB 2019) ("[T]he Board may exercise its inherent authority under individual circumstances to consider a filing on the merits where service issues are present.").

III. Motion for Relief

Fed. R. Civ. P. 60(b) provides relief from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

[2] The Board's records have been updated accordingly.

> (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under 59 (b);
> (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of any adverse party;
> (4) the judgment is void;
> (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have a prospective application; or
> (6) any other reason justifying relief from the operation of judgment.

A motion under Fed. R. Civ. P. 60(b) must be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment was entered. Inasmuch as Respondent's motion for relief was filed more than a year after judgment was entered, Respondent cannot prevail under reasons (1), (2), or (3). Respondent moves for relief under reason (6).

Relief from judgment under Fed. R. Civ. P. 60(b)(6) is an extraordinary remedy, to be granted in the Board's discretion only in exceptional circumstances. *See Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 864, 108 S. Ct. 2194, 2204 (1988); *Djeredjian v. Kashi Co.*, 21 USPQ2d 1613, 1615 (TTAB 1991). Considerations as to whether a judgment should be vacated under Rule 60(b)(6) include: (1) the risk of injustice to the parties in the particular case, (2) the risk that the denial of relief will produce injustice in other cases, and (3) the risk of undermining the public's confidence in the judicial process. *Liljeberg*, 486 U.S. at 864. "To justify relief under subsection (6), a party must show 'extraordinary circumstances' **suggesting that the party is faultless in the delay**." *Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 393, 113 S. Ct. 1489, 1497 (1993) (emphasis added).

Additionally, relief under Rule 60(b)(6) is mutually exclusive of the other subsections of Rule 60(b), such that a movant seeking relief from judgment based the grounds for relief enumerated in subsections (b)(1) through (b)(5) cannot also obtain relief under subsection (b)(6). *Liljeberg*, 486 U.S. at 863. This exclusion prevents parties from invoking reason (6) as an easy escape from the one-year time limit of the first three reasons. WRIGHT, MILLER & KANE, 11 FED. PRAC. AND PROC. § 2864 (3d ed. Apr. 2023 update).

Respondent asserts that it never received any documents served in this proceeding. In support thereof, it submits the declaration of its director and owner Prateek Bhagchandka, who acknowledges that the mailing address of record for Respondent is correct, but states that postal service in India (where Respondent is located) has been unreliable since the beginning of the COVID-19 pandemic, and that as a result it never received mailed documents about the proceeding from the USPTO. 12 TTABVUE 6-7. Mr. Bhagchandka further states that Respondent's former counsel who assisted it with registration did not notify it of the proceeding, and that he believes that counsel also received no notice. *Id.* at 7. Mr. Bhagchandka asserts that Respondent first learned of this proceeding in mid-March 2023, while negotiating a licensing deal with a distributor in the United States. *Id.* at 7-8.

In response, Petitioner contends that it contacted Respondent's former counsel in May 2020 to discuss the parties' potential dispute, and that counsel responded that it would reach out to Respondent. 13 TTABVUE 5-6. Petitioner asserts that it also informed that counsel in November 2021 of the filing of the petition to cancel. *Id.*

In reply, Respondent argues that Petitioner's assertions that it notified Respondent's former counsel of this proceeding are unsupported by evidence. 14 TTABVUE 2-3.

On this record we do not find the circumstances to warrant invocation of the extraordinary remedy of relief from judgment under Rule 60(b)(6). Accepting Respondent's representation that it first learned of the cancellation of its registration in mid-March 2023, Respondent nonetheless delayed an additional four months before filing its motion for relief. In total, Respondent's motion was filed approximately twenty months after the cancellation proceeding was initiated, and approximately sixteen months after judgment was entered against Respondent. It appears that Respondent made no effort to monitor the status of its registration during this period. In addition, although Respondent was advised in its issued registration to maintain a current e-mail address with the USPTO, Respondent did not do so. *See* Trademark Status and Document Retrieval system (TSDR), Registration No. 6003612, March 3, 2020 Registration Certificate at 2. Accordingly, we cannot say on this record that Respondent was "faultless in the delay." *Pioneer*, 507 U.S. at 393.

Applying the Rule 60(b)(6) factors, we find that the risk of injustice to Petitioner if we grant Respondent's request for relief outweighs the risk of injustice to Respondent if we do not. Although denying relief would mean that Respondent's registration will remain cancelled, Respondent was apparently unaware for a year that it was cancelled; and even after it learned of the cancellation, it delayed another

four months before filing its motion. This record suggests that Respondent was not harmed by the cancellation. Further, as explained above, Respondent made no effort to monitor the status of its registration, and did not provide the USPTO with its email contact information as it was advised; thus, Respondent is not blameless for its situation. On the other hand, granting relief to Respondent over eighteen months after judgment was entered – and thereby restarting this proceeding from the beginning – would unjustly prejudice Petitioner by significantly lengthening the uncertainty of its ability to register and use its pleaded mark.

In addition, we find that disturbing the judgment on this record and after such a long period of time would undermine the public trust in the finality of judgments. Finally, there is no evidence that denying relief to Respondent would negatively impact other judicial proceedings.

In view of the foregoing, Respondent's motion for relief under Rule 60(b)(6) is **DENIED**.