

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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October 23, 2025

Cancellation No. 92089368

Avani Gregg Brands LLC

v.

Garment Line, Inc.

M. Catherine Faint
Interlocutory Attorney:

Pursuant to Fed. R. Civ. P. 26(f) and Trademark Rules 2.120(a)(1) and (2), the parties held a timely discovery conference on October 17, 2025. *See* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 401.01 (2025). At Petitioner's request, a member of the Board participated in the conference. *See* Trademark Rule 2.120(2)(i). Participating were Kenneth A. Feinswog, Atty. appearing on behalf of Avani Gregg Brands LLC (Petitioner), and Chad Biggins, Atty. appearing on behalf of Garment Line, Inc. (Respondent).

I. Respondent's Attorney Must Enter Appearance and Change of Correspondence Address

During the teleconference the Board informed Respondent's Attorney that he must enter an appearance and a change of correspondence address via ESTTA so that his bar information and correspondence information is properly of record.

As of the date of this order, counsel has not made these filings. Accordingly, Chad Biggins is **ordered within 30 DAYS** of the date of this order to file an entry of appearance and change of correspondence address via the Board's electronic filing system ESTTA.

II. General Rules and Guidelines

The Board apprised the parties of general procedural rules and guidelines that govern *inter partes* proceedings, including:

- the Board's liberal granting of motions to suspend for settlement efforts;
- the requirement that a party serve its initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1)(A)(i) and (ii) prior to serving discovery requests or a motion for summary judgment (*see* Trademark Rules 2.120(a)(3) and 2.127(e)(1), 37 C.F.R. § 2.120(a)(3) and 2.127(e)(1));
- the requirement that a motion to compel initial disclosures must be filed within thirty days after the deadline therefor (*see* Trademark Rule 2.120(f)(1), 37 C.F.R. § 2.120(f)(1));
- the requirement that all discovery requests must be served early enough to allow for responses prior to the close of discovery. Trademark Rule 2.120(a)(3), 37 C.F.R. § 2.120(a)(3). The Board has clarified that this means 31 days prior to the close of discovery. *Estudi Moline Dissey, S.L. v. BioUrn, Inc.*, No. 92061508, 2017 TTAB LEXIS 238, at *6 (discovery requests must be served with at least thirty-one days remaining in the discovery period, including date of service, regardless of whether day of service falls on weekend or holiday). The duty to supplement discovery responses continues even after the close of discovery;
- the requirement under Fed. R. Civ. P. 26(b)(5)(A)(i)-(ii) that a party withholding documents on the basis of a claim of privilege must, "(i) expressly make the claim; and (ii) describe the nature of the documents, communications, or tangible things not produced or disclosed – and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim." The most common way to do this is by using a privilege log which identifies each document withheld, information regarding the nature of the privilege/protection claimed, the name of the person making/receiving the communication, the date and

place of the communication, and the document's general subject matter; *see* TBMP § 406.04(c);

- the requirement that motions to compel discovery, motions to test the sufficiency of responses or objections, and motions for summary judgment must be filed prior to the deadline for pretrial disclosures for the first testimony period as originally set or as reset. *See* Trademark Rules 2.120(f)(1) and 2.127(e)(1), 37 C.F.R. 2.120(f)(1) and 2.127(e)(1); and *Asustek Comput., Inc. v. Chengdu Westhouse Interactive Entm't Co.*, No. 91225271, 2018 TTAB LEXIS 391, at *5 (reconsideration of Board order denying untimely motion to compel filed on deadline for pretrial disclosures denied); and
- that testimony may be submitted in the form of an affidavit or declaration. Trademark Rules 2.121, 2.123 and 2.125.

III. Conference Summary

The Board inquired as to whether there are any related proceedings and whether the parties had engaged in settlement discussions. The parties informed the Board that there is no related federal or state court proceeding.

The parties did have some settlement discussions, but did not reach agreement.

IV. Email Service

Pursuant to Trademark Rule 2.119(b), 37 C.F.R. § 2.119(b), service of papers must be made via email unless otherwise stipulated by the parties. Deadlines for submissions to the Board that are initiated by a date of service are 20 days. Trademark Rule 2.127, 37 C.F.R. § 2.127. Responses to motions for summary judgment are 30 days, while reply briefs are 20 days. Deadlines for responses to discovery requests are 30 days. Trademark Rule 2.120(a)(3), 37 C.F.R. § 2.120(a)(3).

V. Requirement for Certificate of Service

Trademark Rules 2.119(a) and (b), 37 C.F.R. § 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.

Submissions in Board proceedings must be made via ESTTA, the Electronic System for Trademark Trials and Appeals, and must be in compliance with Trademark Rules 2.126(a) and (b), 37 C.F.R. § 2.126(a) and (b). *See* TBMP § 110.01. The ESTTA user manual, ESTTA forms, and instructions for their use are at <http://estta.uspto.gov/>.

It is recommended that any party be familiar with the latest edition of Chapter 37 of the Code of Federal Regulations (C.F.R.), which includes the Trademark Rules of Practice. Parties should also be familiar with the TBMP, available at <http://www.uspto.gov/ttab>, and the TTABVUE system for viewing the record for all Board proceedings, available at <http://ttabvue.uspto.gov/ttabvue/>.

VI. Electronic Resources

As discussed, the Board has an electronic filing system that is different than the one used to file Trademark applications and updates to registrations. This system, named ESTTA, may be accessed via the Board's website: <http://estta.uspto.gov/>. To highlight some features of the system, when a filing is made, a pre-populated cover sheet is generated; filings then may be attached in a .PDF format; if the filing has successfully been completed, the filer will receive an ESTTA tracking number; if there are any problems, call the Board at 571-272-8500 and ask to be put through to one of the information specialists.

Addresses can be changed easily through an electronic form. Consented motions to extend or suspend can be filed and normally an automatic grant of the motion will be generated.

Also available to the parties is the Board's TTABVUE system which contains all of the Board's electronic files, including the one for this case. The parties may wish to conduct a status check of this case at least twice per month to be sure something is not missed. The parties may access TTABVUE through the Board's website at: <http://ttabvue.uspto.gov/ttabvue/>.

The parties may want to pay particular attention to TBMP Chapters 400-800 which describe the conduct of Board proceedings. Chapter 400 describes written discovery tools and discovery depositions. The parties should also look to the Trademark Rules for specific guidance. TBMP § 414 provides an extensive, but not exhaustive, guideline of typical discovery topics in Board proceedings.

VII. Board's Standard Protective Order

The Board's Standard Protective Order (SPO) is automatically imposed in this proceeding pursuant to Trademark Rule 2.116(g), unless the parties, by stipulation approved by the Board, agree to an alternative order, or a motion by a party to use an alternative order is granted by the Board. If the parties choose to modify the terms of the Board's standard protective order and enter into their own stipulated protective order, a copy of the executed agreement should be filed with the Board. The Board will acknowledge receipt of the agreement, but the parties should not wait for the Board's acknowledgement to conduct themselves in accordance with the terms of

their agreement. *Intercontinental Exch. Holdings, Inc. v. New York Mercantile Exch., Inc.*, No. 91235909, 2021 TTAB LEXIS 357, at *2 (Board’s standard protective order may be modified by stipulation of parties, approved by Board, or upon motion granted by Board).¹

The parties did not wish to submit a signed version of the SPO.

VIII. Review of the Pleadings

A. Petition to Cancel

Reviewing the petition to cancel, Petitioner alleges it has filed two applications that were refused registration based upon Respondent’s registered mark. Petitioner alleges two claims.

The first claim is that Respondent has never used the registered mark. This Board and the Court of Appeals for the Federal Circuit have considered the question of a “never used” mark in connection with abandonment, and have found that, so long as the period during which the mark was never used is alleged to be at least three years, or is alleged to be less than three years but is accompanied by the necessary allegations of lack of intent to resume (or commence) use, the ground is legally sufficient. *Wirecard AG v. Striatum Ventures B.V.*, No. 92069781, 2020 TTAB LEXIS 12, at *10. In other words, so long as the claim that the mark was never used specifies a period of three years of nonuse, or a period of less than three years with no intent to commence use, the claim that the mark was never used also pleads the nonuse

¹ The parties may not use an amended protective order to circumvent paragraph (d) and (e) (public availability of records) of Trademark Rule 2.27, 37 C.F.R. § 2.27. See TBMP § 412.02(a).

necessary for abandonment. The allegation in the petition to cancel is not sufficient as it does not specify a period of at least three years of nonuse, nor an intent not to resume use. The claim is **stricken**

The second claim, is one of abandonment, that alleges the mark has not been used for a period of more than six years with no intent to resume use. The pleading of abandonment is sufficient.

Petitioner indicates it may wish to replead the never used claim. Petitioner is allowed **THIRTY DAYS** from the date of the teleconference to file and serve an amended petition to cancel, **failing which** the never used claim is stricken with prejudice.

B. Answer

Respondent has answered the petition to cancel denying the salient allegations, or stating that it is without sufficient information to admit or deny. The answer is sufficient. Respondent alleges three putative affirmative defenses and makes certain other statements, which the Board has reviewed and finds the following.

Respondent's first defense, that Petitioner does not have a right to use the mark is not an affirmative defense per se, while Respondent's second affirmative defense is one of unclean hands. Such defenses are unavailable against a claim of abandonment. Also, they have only limited availability in regards to a nonuse claim which has not been alleged here. *See Am. Vitamin Prods., Inc. v. Dow Brands, Inc.*, No. 92019036, 1992 TTAB LEXIS 10, at *6 (equitable defenses, such as unclean hands, unavailable against abandonment claims); *Colt Indus. Op. Corp. v. Olivetti Controllo Numerico*

S.p.A., No. 91064642, 1983 TTAB LEXIS 26, at *11 (defense of unclean hands found not well taken where allegations bottomed on defendant's claim of priority); *Tony Lama Co., Inc. v. Di Stefano*, No. 92011422, 1980 TTAB LEXIS 6, at *7 (concept of unclean hands must be related to a plaintiff's claim; misconduct unrelated to claim against which it is asserted as defense does not constitute unclean hands). **The first and second affirmative defenses are stricken and may not be repled.**

Respondent also attempts to reserve the right to allege affirmative defenses in the future, which is not permitted. A defendant cannot reserve some unidentified defenses, because such a "reservation" does not provide plaintiff with fair notice of any such claims and defenses. Whether or not Respondent may, at some future point, add an affirmative defense would be resolved by way of a motion to amend for Board approval. *See* Fed. R. Civ. P. 15(a). Accordingly this affirmative defense is **stricken and may not be repled.**

IX. Accelerated Case Resolution (ACR)

The Board referred the parties to TBMP §§ 528.05(a)(2), 702.04 and 705, as well as the link on the Board's web page to a vast amount of ACR information and exemplary ACR proceedings. The Board explained that the ACR procedure is an expedited one for obtaining a final decision from the Board. In order to pursue ACR, the parties must stipulate that the Board can make findings of fact. The parties may review more detailed information about ACR at the Board's website: <http://www.uspto.gov/ttab> and in TBMP § 528.05(a)(2). Should the parties agree to use the ACR procedure, the parties are reminded that they may stipulate to facts

after the close of the initial disclosure period and to a shortening of the discovery period. *See* Trademark Rule 2.120(a)(2).

The parties were not willing to stipulate to ACR at this time. The parties may telephone the Interlocutory Attorney at any time to schedule a teleconference to discuss ACR.

X. Discovery

Requests for production of documents and requests for admission, as well as interrogatories, are normally each limited to 75. Trademark Rule 2.120, 37 C.F.R. § 2.120. While the Board in its discretion may allow additional discovery requests, such may be granted only upon a showing of good cause or upon stipulation of the parties. *See* TBMP §§ 405.03(c), 406.05(c) and 407.05(c). Such a determination is made on a case-by-case basis. *See, e.g., Spliethoff's Bevrachtingskantoor B.V. v. United Yacht Transp. LLC*, No. 91219179, 2020 TTAB LEXIS 200 at *8 (TTAB 2020) (discussing what constitutes good cause to exceed limitations on discovery requests). The parties may stipulate to further limit the time for discovery and the number of discovery requests.

XI. Electronically Stored Information (ESI)

There was some discussion of electronically stored information (ESI). The parties indicated that they did not expect to have much in the way of ESI. The Board reminded the parties that electronically stored information, including emails, must be preserved during litigation. *See* Fed. R. Civ. P. 34.

XII. Schedule

Petitioner is allowed **THIRTY DAYS from the date of this teleconference** to file and serve an amended petition to cancel which pleads a sufficient claim that the mark was never used.

If Petitioner files an amended petition to cancel, Respondent is allowed **thirty days from the date an amended petition is filed** to file and serve an amended answer.

Dates are otherwise reset as set out below.

Deadline for Discovery Conference	CLOSED
Discovery Opens	1/6/2026
Initial Disclosures Due	2/5/2026
Expert Disclosures Due	6/5/2026
Discovery Closes	7/5/2026
Plaintiff's Pretrial Disclosures Due	8/19/2026
Plaintiff's 30-day Trial Period Ends	10/3/2026
Defendant's Pretrial Disclosures Due	10/18/2026
Defendant's 30-day Trial Period Ends	12/2/2026
Plaintiff's Rebuttal Disclosures Due	12/17/2026
Plaintiff's 15-day Rebuttal Period Ends	1/16/2027
Plaintiff's Opening Brief Due	3/17/2027
Defendant's Brief Due	4/16/2027
Plaintiff's Reply Brief Due	5/1/2027
Request for Oral Hearing (optional) Due	5/11/2027

Important Trial Briefing Instructions

Generally, the Federal Rules of Evidence apply to Board trials. Trial testimony is taken and introduced out of the presence of the Board during the assigned testimony periods. The parties may stipulate to a wide variety of matters, and many requirements relevant to the trial phase of Board proceedings are set forth in

Trademark Rules 2.121 through 2.125. These include pretrial disclosures, the manner and timing of taking testimony, matters in evidence, and the procedures for submitting and serving testimony and other evidence, including affidavits, declarations, deposition transcripts and stipulated evidence. Trial briefs shall be submitted in accordance with Trademark Rules 2.128(a) and (b). Such briefs should utilize citations to the TTABVUE record created during trial, to facilitate the Board's review of the evidence at final hearing. *See* TBMP § 801.03. Oral argument at final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).
