

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

MBA

Mailed: February 21, 2008

Concurrent Use No. 94002255

Children's Chance

v.

The Children's Chance, Inc.

v.

Children's Change

Michael B. Adlin, Interlocutory Attorney:

On November 28, 2007, the Board issued an order allowing excepted users The Children's Chance, Inc. and Children's Change thirty days in which to show cause why judgment by default should not be entered against them. No response from either user having been received within the time provided or thereafter, judgment by default is hereby entered against both users, precluding them from claiming any right more extensive than that acknowledged by applicant. Trademark Rule 2.99(d)(3); Newsday, Inc. v. Paddock Publications, 223 USPQ 1305, 1330 (TTAB 1984).

Nonetheless, applicant is advised that it still bears the burden of proving entitlement to the registration sought, i.e. that there exists no likelihood of confusion among consumers

by reason of the concurrent use by the parties of their respective marks. Trademark Rule 2.99(d)(3); Precision Tune Inc. v. Precision Auto-Tune Inc., 4 USPQ2d 1095 (TTAB 1987).

Where, as in this case, the concurrent use proceeding involves only a concurrent use applicant and specified common law user(s) which do not have an application or registration, and default judgment has been entered against such user(s), the Board will allow the applicant to prove its entitlement to registration by an "ex parte" showing. Precision Tune, supra. That is, for example, an applicant may submit affidavit evidence, as opposed to more formal deposition transcripts, in support of its concurrent use claim.

Accordingly, and pursuant to TBMP § 1107 (2d ed. rev. 2004), applicant is allowed **SIXTY DAYS** from the mailing date of this order in which to submit proof of its entitlement to registration. Proceedings herein are otherwise suspended.
