

ESTTA Tracking number: **ESTTA362219**

Filing date: **08/09/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92048691
Party	Plaintiff Pandol Bros., Inc.
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Date	08/09/2010
Attachments	Motion to Resume Cancellation Proceeding.pdf (10 pages)(76827 bytes) Bosworth Declaration.pdf (3 pages)(11946 bytes) EXHIBITS 1-4.pdf (40 pages)(1937231 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of:

Registration No.: 3,152,058
Registration Date: October 3, 2006
Mark: PANDOL

and

Registration No.: 3,195,027
Registration Date: January 2, 2007
Mark: PANDOL FAMILY FARMS

PANDOL BROS., INC.,

Petitioner,

v.

JAMES A. PANDOL,

Registrant.

Cancellation No. 92048691

**MOTION BY PETITIONER,
PANDOL BROS., INC., TO
RESUME CANCELLATION
PROCEEDING AND
MEMORANDUM IN SUPPORT
THEREOF**

PETITIONER'S MOTION TO RESUME CANCELLATION PROCEEDINGS

Pursuant to 37 C.F.R. § 2.217 and Trademark Board Manual of Procedure § 510.02(b), Petitioner, Pandol Bros., Inc. ("Pandol Bros." or "Petitioner"), hereby requests that the present Cancellation proceeding be resumed. In addition, Petitioner hereby requests that relevant dates be reset and a ruling made on Petitioner's Motion for Summary Judgment, filed and served on October 27, 2009.

This motion is supported by the Memorandum filed herewith and Declaration of Michael K. Bosworth (“Mike Bosworth”) submitted herewith.

Respectfully submitted,

Dated: August 9, 2010

By: /michael Bosworth/

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MEMORANDUM

I. INTRODUCTION

Pursuant to 37 C.F.R. 2.217 and Trademark Board Manual of Procedure § 510.02(b), Petitioner, Pandol Bros., Inc. (“Pandol Bros.” or “Petitioner”), hereby requests that (1) the present Cancellation proceeding be resumed; (2) relevant dates be reset; and (3) Petitioner’s Motion for Summary Judgment, filed and served on October 27, 2009, be decided by the Trademark Trial and Appeals Board (TTAB).

Petitioner filed a Motion for Summary Judgment and a Motion to Suspend Proceedings Pending Decision On Petitioner’s Motion for Summary Judgment on October 27, 2009 and served both motions on opposing counsel on October 27, 2009. On November 9, 2009, the parties stipulated to and filed with the TTAB, a Stipulation Re Dispositive Motions, Rule 30(b)(6) Deposition of Petitioner and Pending Motion to Suspend Proceedings proposing Petitioner’s noticed Rule 30(b)(6) deposition on November 19 and 20, 2009, at the offices of Respondent’s counsel and to file and serve their opposition to Petitioner’s Motion for Summary Judgment as well as any Cross-Motions, by December 21, 2009. On November 16, 2010, the TTAB approved the parties’ stipulation with respect to the provisions that the motion for summary judgment was timely and the November 19 and 20 dates for the previously-noticed Rule 30(b)(6) deposition (the “Stipulated Depositions”) and the time period for filing a response to Petitioner’s Motion for Summary Judgment as well as any cross-motion for summary judgment is extended to December 21, 2009 but did not approve the parties’ stipulation with respect to the provisions that the Petitioner’s time for filing a reply to the motion for summary judgment, as well as any opposition to the cross-motion, to be extended beyond

the fifteen days from the date of service of the brief in response to the motion allowed under the Trademark Rule 2.127(e)(1). Accordingly, the TTAB suspended the present proceeding pending disposition of the Petitioner's October 27, 2009 Motion for Summary Judgment.

On November 19, 2009, the Stipulated Depositions were conducted at the offices of Respondent's counsel and ended in one day with no need to resume on November 20, 2009. Bosworth Decl.; ¶ 3.

On December 17, 2009, opposing counsel, D. Greg Durbin, filed James A. Pandol's Notice of Bankruptcy with the TTAB, attaching a copy of Registrant's Voluntary Petition under Chapter 12, filed with the United States Bankruptcy Court Eastern District of California, and served the same on Petitioner's attorneys. On January 11, 2010, the TTAB suspended the present proceeding under the automatic stay provisions of the Section 362 of the United States Bankruptcy Code, 11 U.S.C. § 362, pending final determination of the bankruptcy case and ruled that twenty one days after the final determination of the bankruptcy case, Respondent must notify the TTAB and that upon resumption of the proceedings, Registrant will be allowed time in which to respond to Petitioner's Motion for Summary Judgment.

On March 15, 2010, Petitioner's counsel, Michael K. Bosworth, filed a copy of the relevant pages of an Order for Relief from Stay, dated March 10, 2010, by the U.S. Bankruptcy Court ordering the termination and annulment of the automatic stay of 11 U.S.C. Section 362 of the present cancellation proceeding and authorizing Petitioner to perform any and all acts necessary and/or proper to enforce rights relative to the cancellation proceeding and to obtain a final order.

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