THIS OPINION IS NOT A PRECEDENT OF THE T.T.A.B.

Mailed: January 7, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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Drowning Pool LLC

v.

Drowning Pool

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Opposition No. 91154398
to application Serial No. 76287792
on Reconsideration

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J. Rogers Lunsford III of Smith, Gambrell & Rusell, LLP for Drowning Pool, LLC.

Gordon E. Gray III of Gray Law Firm for Drowning Pool.

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Before Quinn, Drost and Cataldo,
Administrative Trademark Judges.

Opinion by Cataldo, Administrative Trademark Judge:

On July 11, 2007, the Board issued a final decision in the above-captioned proceeding. In that decision, we sustained the opposition on the grounds that opposer possessed standing to bring its opposition to registration of the involved mark as well as a proprietary interest in its asserted DROWNING POOL mark; that applicant abandoned the mark DROWNING POOL for musical sound recordings and live

performances; and that, as a result, applicant does not presently possess rights in the DROWNING POOL mark.

On August 10, 2007, applicant timely filed a motion for reconsideration of that decision. *See* Trademark Rule 2.129(c). Opposer has timely filed a brief in opposition thereto. *See Id.*

In its motion for reconsideration, applicant asserts that our July 11, 2007 decision is in error for the following reasons:

(1) "The Board erred by failing to identify *when* Opposer's alleged standing arose and therefore fails to support its holding" (request for reconsideration, p. 1, emphasis in original);

(2) "The Board erred by accepting fraudulent declarations and testimony from Opposer and not terminating the opposition for fraud" (*Id.*); and

(3) "The Board erred by failing to give weight to sales made by Applicant's record label and finding abandonment contrary to the specific terms of 15 U.S.C. § 1127" (*Id.* at 2).

It has often been stated that the premise underlying a request for rehearing, reconsideration, or modification under Trademark Rule 2.129(c) is that, based on the evidence

of record and the prevailing authorities, the Board erred in reaching the decision it issued. *See* TBMP §544 (2d ed. rev. 2004) and the authorities cited therein. The request may not be used to introduce additional evidence, nor should it be devoted simply to a reargument of the points presented in the requesting party's brief on the case. *See Amoco Oil Co. v. Amerco, Inc.*, 201 USPQ 126 (TTAB 1978). Rather, the request normally should be limited to a demonstration that, based on the evidence properly of record and the applicable law, the Board's ruling is in error and requires appropriate change. *See, for example, Steiger Tractor Inc. v. Steiner Corp.*, 221 USPQ 165 (TTAB 1984), *different results reached on reh'g*, 3 USPQ2d 1708 (TTAB 1984). *Cf. In re Kroger Co.*, 177 USPQ 715, 717 (TTAB 1973).

We address each of applicant's arguments in turn. With regard to applicant's first contention, in our July 11, 2007 decision we found that, based upon the testimony and evidence of record and in accordance with the relevant authorities, opposer possesses both a real interest in this proceeding and a reasonable basis for its belief of damage and, therefore, possesses standing to bring this opposition. Implicit in that finding is that opposer possessed the requisite standing to bring this proceeding at the time it was commenced. With regard to applicant's second contention, in our July 11, 2007 decision we noted the

parties' numerous evidentiary objections and found that none of them were outcome determinative. We further indicated that the testimony and evidence submitted by both parties would be accorded such probative value as was merited bearing in mind the various objections thereto. With regard to applicant's third contention, it is noted that sales of applicant's music by its distributor was discussed – and found to be insufficient - in that portion of our July 11, 2007 order addressing applicant's attempts to overcome the prima facie showing that applicant had abandoned the DROWNING POOL mark. Finally, we note that applicant relies upon the same authorities in its request for reconsideration that were found unpersuasive in its brief on the merits of the case.

Thus, applicant points to no error on the part of the Board in our July 11, 2007 decision on final hearing but rather expresses disagreement with the result reached therein, and reargues points previously raised in support of its position. As a result, we remain of the opinion that our July 11, 2007 decision is correct.

Accordingly, applicant's motion for reconsideration is denied.