

THIS OPINION IS NOT A
PRECEDENT OF THE
TTAB

Mailed
10 November 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Dubliner, Inc.
v.
The Irish Dairy Board Co-Operative Limited

Opposition No. 91164315
Cancellation No. 92044189

Decision on Remand

Joseph D. Lewis of Barnes & Thornburg, LLP for Dubliner,
Inc.

Anthony R. Masiello of Holland & Knight LLP for The Irish
Dairy Board Co-Operative Limited.

Before Rogers, Drost, and Mermelstein, Administrative
Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On August 30, 2007, the board held in favor of
defendant The Irish Dairy Board Co-Operative Limited
(applicant/respondent) and dismissed the notice of
opposition to the registration of defendant's application
Serial No. 75922820 and denied a petition to cancel
defendant's Registration No. 2319632, both filed by
plaintiff Dubliner, Inc. (opposer/petitioner).

After the board's decision, plaintiff appealed to the U.S. Court of Appeals for the Federal Circuit. On October 10, 2008, the Court issued the following order:

Upon consideration of the parties' joint motion to remand this case ... for further proceeding consistent with the settlement agreement reached by the parties and, specifically, to allow the parties to jointly move the Board for vacatur of its decision on appeal,

IT IS SO ORDERED THAT:

- (1) The motion is granted.
- (2) All remaining motions are moot.
- (3) Each side shall bear its own costs.

The parties have now filed a Joint Motion to Vacate Judgment and Terminate Proceedings, which provides as follows:

By this motion, the parties expressly **do not** request any relief that would adversely affect the Application or the Registration. It is the intention of the parties that if the Board grants this motion, or any part thereof, the Application will remain pending, Applicant will be permitted to continue to prosecute it to ultimate registration, and the Registration will continue to subsist on the Principal Register.

Joint Motion at 2-3 (emphasis in original).

Specifically, the parties request (Joint Motion at 4) that the Board:

- (1) Vacate its decision issued on August 30, 2007;
- (2) Deem the Opposition and the Cancellation withdrawn with prejudice; and
- (3) Forward the Application to the appropriate division of the U.S. Patent and Trademark Office for issuance of a registration in due course.

The *Trademark Trial and Appeal Board Manual of Procedure*, Section 544, provides:

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Where the parties are agreed that the circumstances warrant the vacating or setting aside of a final judgment, a stipulation or consented motion for relief from the judgment should be filed. The Board ordinarily will grant a consented request for relief from judgment.

Inasmuch as there are no circumstances that would suggest that relief from judgment would not be appropriate in this case and the result is consistent with the decision of August 30, 2007, the motion to vacate is granted.

Decision: Plaintiff's notice of opposition to Application Serial No. 75922820 and petition to cancel Registration No. 2319632, are both withdrawn with prejudice. The Joint Motion to vacate the judgment of the board entered August 30, 2007, is granted.