

11/07/02

**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

Paper No. 48
csl

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

North American Bear Co., Inc.

v.

The Vermont Teddy Bear Co., Inc.

Opposition No. 107,763
to application Serial No. 75/030,467
filed on December 4, 1995

Request for Reconsideration

James M. Amend, P.C. of Kirkland & Ellis for North American
Bear Co., Inc.

H. Jay Spiegel, Esq. of H. Jay Spiegel & Associates for The
Vermont Teddy Bear Co., Inc.

Before Simms, Hohein and Holtzman, Administrative
Trademark Judges.¹

Opinion by **Simms**, Administrative Trademark Judge:

On August 8, 2001, the Board issued a final decision
sustaining this opposition, finding likelihood of confusion

¹Administrative Trademark Judge Hohein has been substituted for Judge
Wendel, who was on the panel which decided this case but who has since
retired.

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of applicant's mark THE GREAT AMERICAN TEDDY BEAR for stuffed toy animals and for message delivery services accompanied by stuffed toy animals with opposer's mark and trade name NORTH AMERICAN BEAR CO. INC. for stuffed toys.

On September 10, 2001, with a certificate of mailing dated September 6, 2001, applicant filed a request for reconsideration. Opposer filed a motion for an extension of time in which to file its brief in opposition accompanied by its brief in opposition. These papers have only recently been forwarded to the panel for consideration. The Board apologizes for the delay in acting upon applicant's request for reconsideration.

In its request for reconsideration, applicant, among other things, noted that the Board decided this case without granting it an oral hearing, which it had earlier requested. Applicant has renewed its request for an oral hearing in the request for reconsideration.

A review of this file reveals that applicant requested an oral hearing on October 6, 1999. On March 6, 2000, the Board scheduled the oral hearing. However, on March 16, 2000, the Board "cancelled" the oral hearing, noting that pending motions had not yet been decided, and stated that an oral hearing would be rescheduled. Unfortunately, the

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Board failed to reschedule the oral hearing and decided this case on the existing record and the briefs.

In view of this error, the final decision issued by the Board on August 8, 2001, is hereby vacated and a new oral hearing will be scheduled in the near future. The parties will be advised shortly of the new hearing date.

In view of this order, applicant's request for reconsideration is considered moot.