

AMERICAN INDIAN MOTORCYCLE CO., INC.

v.

INDIAN MOTORCYCLE SUPPLY, INC.

Opposition No. 95,246  
On Petition To The Commissioner  
Filed September 12, 1996

### Decision

Indian Motorcycle Supply, Inc., Applicant in the above-identified proceeding, has petitioned the Commissioner to vacate an interlocutory order issued by the Trademark Trial and Appeal Board, granting Opposer's motion for relief from a judgment under Fed. R. Civ. P. 60(b)(1). The petition is denied under Trademark Rule 2.146(a)(3).

### FACTS<sup>1</sup>

The underlying application was published for opposition on January 26, 1993. Opposition No. 95,246 was instituted on April 12, 1993.<sup>2</sup> On February 5, 1996, the Trademark Trial and Appeal Board ("Board"), denied Opposer's motion to reopen trial dates under Fed. R.

Civ. P. 6(b), granted Applicant's motion to dismiss under Trademark Rule 2.132(a), and dismissed the opposition with prejudice.

On March 4, 1996, Opposer filed a combined request for reconsideration, and motion for relief from judgment under Fed. R. Civ. P. 60(b)<sup>3</sup>. In its order of August 13, 1996, the Board granted Opposer's motion for relief from judgment, based on Fed. R. Civ. P. 60(b)(1), and vacated the Board order of February 5, 1996. This petition followed.

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<sup>1</sup> Only the filings pertinent to the issue on petition are reviewed.

<sup>2</sup> Due to a clerical error, Trademark Registration No. 1,964,839 for the mark INDIAN, was inadvertently issued on April 2, 1996 to Indian Motorcycle Supply, Inc. ("Applicant"). On September 12, 1996, the registration was cancelled, and the application restored to pendency under application Serial No. 74/307804.

## DECISION

The commissioner will exercise supervisory authority under Trademark Rule 2.146(a)(3), to vacate an action of the Trademark Trial and Appeal Board, only where the Board has committed a clear error or an abuse of discretion. *In re Societe Des Produits Nestle S.A.*, 17 USPQ2d 1093 (Comm'r Pats. 1990); *Riko Enterprises, Inc. V. Lindsley*, 198 USPQ 480 (Comm'r. Pats. 1977). For the reasons set forth below, the Board has neither committed a clear error nor abused its discretion in this case.

The determination whether to grant a motion under Rule 60(b) is largely within the discretion of the court. *Case v. BASF Wyandotte et al.*, 222 USPQ 737 (Fed. Cir. 1984). The Board's rationale for vacating its February 5, 1996 order is not based on a strained interpretation of either Opposer's supplemental information, the overall record, or the case law cited by the Board in support of its authority under Rule 60(b). Furthermore, there has been no procedural error committed by the Board such that acceptance of Opposer's supplemental information would constitute a clear error.

The petition is denied. The opposition file will be returned to the Trademark Trial and Appeal Board for resumption of proceedings.

Philip G. Hampton, II  
Assistant Commissioner  
for Trademarks

PGH:NLO:EKM

Date:

Attorney for Petitioner:

Alice O. Martin, Esq.  
Brinks Hofer Gilson & Lione  
P O. Box 10395  
Chicago, Illinois 60610

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<sup>3</sup> In the alternative, Opposer sought to suspend, pending the disposition of a declaratory judgment action involving a non-party receivership wherein the Plaintiff seeks a declaration that Opposer's rights in the involved trademark are void.