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UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

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PAT. & TM. OFFICE

Opposition No. 121,759

Hewlett-Packard Company

v.

HopOne Internet Corporation

Before Hairston, Walters and Holtzman, Administrative Trademark Judges.

By the Board:

On January 18, 2001, opposer filed a notice of opposition against applicant's intent-to-use application on two grounds; likelihood of confusion between opposer's previously used and registered "HP" marks for goods and services including computers and computer consulting services and applicant's mark HOPONE INTERNET CORP. and design for services including computer consulting services; and dilution of opposer's "HP" marks. With respect to the dilution claim, opposer alleges that its marks "are famous throughout the world" and that registration of applicant's mark would dilute the distinctive quality of opposer's famous marks. The Board, on January 23, 2001, issued a notice to the parties instituting this proceeding and allowing applicant until March 4, 2001 to file an answer.

On February 8, 2001, applicant, acting pro se, filed a paper styled "response to frivolous opposition" which we have construed as a motion to dismiss the opposition under Fed. R. Civ. P. 12(b)(6) for failure to state a claim on which relief can be granted. Applicant argues therein that opposer "does not provide services of type that [applicant] does, so there are no common business grounds" and that:

'HopOne Internet Corporation' does contain the letters 'H' and 'P,' however, the letters are not even continuous, nor a prominent portion of the company logo. It is simply that the word 'Hop' contains the two letters (as its first and third letter, respectively), the first being capitalized, and the second appearing in lower-case.¹

Opposer maintains that the notice states sufficient grounds for opposition and that whether applicant's mark contains a prominent depiction of the letters "HP" is the ultimate issue for the Board to decide.²

¹ Applicant also claims that opposer "falsely indicts [sic] that [applicant's] mark has not been used in connection with services." Opposer, in its response, has explained that the allegations in its pleading relate only to applicant's use of its mark prior to the filing dates of the applications underlying opposer's registrations.

² Applicant, on March 20, 2001, filed a reply stating that it "conducted a limited, unofficial, market survey" and that all responses thereto indicated that the marks are not similar. A reply brief, if filed, is due within 15 days from the date of service of the brief in response to the motion. We have deemed the reply timely in this case because the certificate of service attached to opposer's response is unsigned, and although it is clear that the response was served on applicant, we cannot assume that it was actually served on the date indicated in the certificate. However, because the reply is not accompanied by proof of service on counsel for opposer as required by Trademark Rule 2.119 (which is more fully explained later in this order) it will not be considered by the Board. A copy of the reply is forwarded herewith to counsel for opposer, but strict compliance with Trademark Rule 2.119 is required in all further papers filed with the Board. Moreover, applicant's unsupported and undocumented survey evidence is not proof of anything and, in any event, evidence in

In order to avoid dismissal at this stage of the proceeding, opposer need only allege facts sufficient to state a claim on which relief can be granted. In other words, opposer need only allege facts in its pleading which, if proved, establish that (1) it has standing to challenge the application, and (2) there is a valid ground for seeking to oppose registration. See *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982).

Opposer has sufficiently pleaded its standing by alleging that it has a real interest, that is, a personal stake, in the outcome of the case. See *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023 (Fed. Cir. 1999). Also, opposer has alleged sufficient facts to support a claim of likelihood of confusion between the parties' marks.

Applicant's arguments relate to the merits of opposer's claims rather than the sufficiency of the claims.³ For purposes of a motion to dismiss, all of opposer's well pleaded allegations in the opposition must be accepted as true. Whether the allegations are, in fact, true, is not a matter for determination at this time. See TBMP § 503.02.

support of a party's case will only be considered by the Board if it has been timely and properly introduced in evidence in accordance with the applicable rules. See, for example, TBMP § 702.

³ Applicant should keep in mind, in this regard, that the issue in this case is not whether the typed word "HopOne" is similar to opposer's marks, but whether the particular display of the mark, as it appears in the opposed application, is similar to opposer's marks.

While the pleading of likelihood of confusion is sufficient, we find that opposer has not sufficiently pleaded a claim of dilution inasmuch as there is no allegation as to when opposer's marks became famous. See *Polaris Industries, Inc. v. DC Comics*, 59 USPQ2d 1798 (TTAB 2000).

In view of the foregoing, the motion to dismiss is granted only to the extent that opposer is allowed until **twenty days** from the mailing date stamped on this order to file an amended pleading which states a proper claim of dilution, failing which, the claim of dilution will be dismissed.

Applicant is allowed until **forty days** from the date stamped on this order to file an answer to the amended pleading, if one is filed, or to file an answer to the original pleading, if an amended pleading is not filed. Applicant is required, in accordance with Fed. R. Civ. P. 8(b), to answer the opposition by stating, with respect to each allegation, that the allegation is either admitted or denied. If applicant does not know whether a particular allegation is true or not, applicant may answer by stating that it has insufficient information to admit or deny the allegation, and this will have the effect of a denial.

It should be noted that while Patent and Trademark Office Rule 10.14 permits any person to represent itself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in an opposition proceeding to secure the services of an attorney

who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney. It is recommended that applicant obtain a copy of the latest edition of Title 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice and is available for a fee from the Superintendent of Documents, U. S. Government Printing Office, Washington, D.C. 20402. The Board's manual on practice and procedure (*Trademark Trial and Appeal Board Manual of Procedure*) (TBMP) is available online at www.uspto.gov.

As noted earlier in this order, Trademark Rules 2.119(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney, and proof of such service must be made before the paper will be considered by the Board. Consequently, copies of all papers which applicant may subsequently file in this proceeding, including its answer to the opposition, must be accompanied by a signed statement indicating the date and manner in which such service was made. The statement, whether attached to or appearing on the paper when filed, will be accepted as prima facie proof of service.

Compliance with the applicable rules of practice and procedure is expected of all parties before the Board, whether or not they are represented by counsel.⁴

The motion to compel filed by opposer on October 3, 2001 is noted. A ruling on the motion will be issued once sufficient time has been allowed for the Board to receive applicant's response, if any, to the motion. Except to the extent indicated above, proceedings are suspended pending disposition of the motion to compel. The parties should not file any paper which is not germane to the motion. See Trademark Rule 2.120(e)(2), as amended effective October 9, 1998.

⁴ Applicant's motion contains disparaging remarks directed at opposer's counsel. Applicant is warned that business before the Patent and Trademark Office is to be conducted with decorum and courtesy as required by Trademark Rule 1.3 and that papers presented in violation of this requirement will be submitted to the Director and will be returned by his direct order.