

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3514

Mailed: 4/30/04

Opposition No. 91158156

S&G Consulting, Inc.

v.

Credit Union Careers, Inc.

By the Board:

Credit Union Careers filed an application for the mark HRx and design¹ for "Job placement services for credit unions; outsourcing for credit unions in the fields of human resources, payroll and employee benefits; and salary administration for credit unions" in **International Class** 035. On September 22, 2003 S&G Consulting opposed registration of the mark alleging a likelihood of confusion with its mark "HUMAN RX". In lieu of filing an answer, applicant filed a motion to dismiss on November 20, 2003. Opposer filed a response to applicant's motion and applicant filed a reply.

¹ Application Serial No. 76401534, filed April 29, 2002, alleging a bona fide intention to use the mark in commerce.

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As grounds for the motion to dismiss, applicant states that notice of opposition is insufficient as a matter of law in that opposer has not alleged standing nor statutory grounds sufficient to prevail.

Opposer responded, stating that, in sum, its pleadings are sufficient.

In deciding a motion to dismiss, the Board must accept all of a plaintiff's well-pleaded allegations as true, and the notice of opposition must be construed liberally and in the light most favorable to opposer. Fed. R. Civ. P. 8(f). See *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1027 (Fed. Cir. 1999); *Young v. AGB Corp.*, 152 F.3d 1377, 47 USPQ2d 1752, 1754 (Fed. Cir. 1998) and TBMP § 503.02 (2d ed. 2003).

After careful consideration of applicant's arguments in support of its motion to dismiss, we are of the opinion that the allegations pleaded in plaintiff's notice of opposition are sufficient that, if proven, they will enable opposer to prevail. Construing the allegations, as we must, most favorably to opposer's position, we hold that the notice of opposition has adequately asserted opposer's requisite standing and statutory grounds for opposing applicant's current application. Applicant's arguments are all matters that are to be proven at trial and not to be proven on a motion to dismiss. At a minimum, opposer has pleaded

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sufficient facts, which, if proven, would establish its standing and a likelihood of confusion with applicant's mark, and thereby entitle it to the relief requested.

Accordingly, applicant's motion to dismiss is denied. Applicant has **THIRTY DAYS** from the date hereof to file its answer to the notice of opposition.