

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

DA VINCI DENTAL STUDIOS, INC.,)

Opposer,)

v.)

CONTESSA DA VINCI s.r.l.,)

Applicant.)

Opposition No.: 91163702

Application Serial No. 75/796,383

Mark: ALEXANDRA DA VINCI

Published: July 13, 2004

REPLY BRIEF IN SUPPORT OF
APPLICANT'S MOTION TO DISMISS OPPOSITION

Applicant, Contessa da Vinci s.r.l. ("Applicant"), a limited liability company organized and existing under the laws of Italy, by and through its attorneys Hughes Hubbard & Reed LLP, filed a motion to dismiss the Opposition of Da Vinci Dental Studios, Inc. ("Dental Studios" or "Opposer") on February 11, 2005. Opposer filed its Response Brief on March 1, 2005.

Applicant submits this Reply Brief to address some misstatements made by Opposer in its Response Brief and to clarify Applicant's arguments. Applicant respectfully requests, pursuant to Trademark Trial and Appeal Board Manual of Procedure § 502.02 (2d ed. June 2003) and 37 C.F.R. § 2.127(a), that the Board exercise its discretion and consider Applicant's arguments herein.

Opposer lacks standing to bring its opposition. Dental Studios acknowledges in its complaint and in the Response Brief that it does not have a "real interest" in the opposition. The complaint states that Daniel Materdomini owns Reg. No. 2,061,195 for the DDS Mark. (See Notice of Opposition, para. 2.) Further, the Response Brief recites that the fame of the DDS Mark is based upon the efforts of Daniel Materdomini. (See Opposition to Applicant's Motion



to Dismiss, at 5-6.) It is incongruous for Dental Studios to base its opposition on rights in a mark when a Daniel Materdomini, not itself, owns that mark. While ownership of a federal registration is not necessary to create standing, the fact that a third-party, and not the opposer, owns the registration upon which the opposition is based indicates that the third-party could exclude the opposer from using the mark and therefore, that the opposer does not have a "real interest" in the proceeding. E.D. Bullard Co. v. Gentex Corp., 168 U.S.P.Q. 602, 603-04 (T.T.A.B. 1970) (club President's company did not have standing to oppose registration where mark was owned by club and not by club's President or his company).

While Dental Studios claims in the Response Brief that it is closely held by Materdomini, this assertion was not included in the Notice of Opposition and the Board can only consider facts included in the Notice of Opposition or exhibits attached thereto. See KiSKA Constr. Corp., U.S.A. v. Washington Metro. Area Transit Auth., 321 F.3d 1151, 1158 n. 7 (D.C. Cir. 2003) (on a motion to dismiss the court may consider the complaint standing alone or undisputed facts evidenced in the record). The Notice of Opposition does not allege any relationship between Materdomini and Dental Studios. Further, Opposer has not presented any evidence of such relationship or of an assignment of the DDS Mark from Materdomini to Dental Studios.

WHEREFORE, Applicant respectfully requests that the Board dismiss the Notice of Opposition in its entirety with prejudice and allow Applicant's Mark to mature to registration.

Dated: New York, New York
March __, 2005

Respectfully submitted,
HUGHES HUBBARD & REED LLP



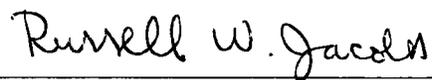
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CERTIFICATE OF MAILING	
I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.	
on	<u>18 March 2005</u>
HUGHES HUBBARD & REED LLP	
Dated: <u>18/3/05</u>	By: <u>Russell W. Jacobs</u>
Name: <u>Russell W. Jacobs</u>	

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of March, 2005 a true and correct copy of the foregoing REPLY BRIEF IN SUPPORT OF APPLICANT'S MOTION TO DISMISS OPPOSITION was served, via first-class mail, postage prepaid on:

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