Mailed: December 3, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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Home Box Office, Inc.
v.
Vanderbilt Trading Partnership

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Opposition No. 91167861

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Sharon A. Ceresnie and Douglas N. Masters of Loeb & Loeb LLP, for Home Box Office, Inc.

Shmuel D. Taub, Esq., for Vanderbilt Trading Partnership

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Before Holtzman, Drost, and Ritchie, Administrative Trademark Judges.

Opinion by Ritchie, Administrative Trademark Judge:

Vanderbilt Trading Partnership applied to register the mark, "SOPRANO CREATIONS" for "boys and mens clothing, namely suits, pants, shirts, vests, jackets, sweaters, coats," in International Class 25.[1]

Home Box Office, Inc. opposed the registration. In its original notice of opposition, opposer alleged that

[1] Serial No. 76533668, filed on July 31, 2003, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), alleging first use and first use in commerce on November 1, 2002, and disclaiming the exclusive right to use "CREATIONS" apart from the mark as shown.

applicant's mark as used on its goods is likely to cause confusion with, and to dilute, opposer's previously used and registered mark THE SOPRANOS for, inter alia, "clothing, namely, shirts, t-shirts, turtlenecks and hats" in International Class 25 (Registration No. 2539014) and "ongoing dramatic television program" in International Class 41 (Registration No. 2366388).

Applicant filed an answer denying the salient allegations in the opposition, and moreover stating that "[a]pplicant has not sold any shirts or sweaters and does not intend to do so in the future." In view of the statements made in applicant's answer, opposer amended the notice of opposition to allege the additional grounds of lack of use of the mark in commerce, and fraud. Applicant, in its answer to the amended pleading, reiterated that "[a]pplicant has not sold any shirts or sweaters and does not intend to do so in the future." Applicant otherwise denied the salient allegations of the amended notice of opposition.

The Record

The record in this opposition proceeding consists of the pleadings and the application file by operation of Trademark Rule 2.122(b), 37 CFR §2.122(b). Neither party submitted testimony or other evidence. Opposer did file a notice of reliance, consisting solely of applicant's

responsive pleadings, which are already of record, as well as an unauthenticated letter purportedly from applicant's counsel, which was not properly submitted via notice of reliance. *See* Trademark Rule 2.122(e), 37 CFR §2.122(e) (providing for the filing of printed publications and official records through a notice of reliance). Since the pleadings included in opposer's notice of reliance are already of record and since the letter is not admissible by means of a notice of reliance, and otherwise consists of inadmissible hearsay, we do not consider opposer's notice of reliance at all in this decision. Indeed, opposer did not even mention its notice of reliance in its "Description of the Record" in its trial brief, instead listing the record as consisting solely of applicant's responsive pleadings. (Opposer's Trial Brief at 1).

Only opposer filed a trial brief. We note that opposer, in its trial brief states:

> "Opposer only addresses Count III [lack of use in commerce] and IV [fraud] of the Amended Notice of Opposition in this trial brief, as it believes Opposer prevails on these counts based on the clear record in this proceeding."
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> (Opposer's Trial Brief at n. 2).

Furthermore, opposer's "Statement of the Issues" in its trial brief reads:

> "The primary issue before the Board is whether Applicant committed fraud on the PTO by declaring that it had used the mark in commerce for all of the applied-for goods when, in fact, it knew that it had not, thereby rendering the application void *ab initio.*"

(Opposer's Trial Brief at 1).

We therefore consider that opposer has waived its claims of likelihood of confusion and likelihood of dilution.

Standing

Standing is a threshold issue that must be proven in every inter partes case. See *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 189 (CCPA 1982) ("The facts regarding standing . . . must be affirmatively proved. Accordingly, [plaintiff] is not entitled to standing solely because of the allegations in its [pleading]."). To establish standing in an opposition, opposer must show both "a real interest in the proceedings as well as a 'reasonable' basis for his belief of damage." *See Ritchie v. Simpson,* 170 F.3d 1092, 50 USPQ2d 1023, 1025 (Fed. Cir. 1999). It is not necessary that opposer establish its own prior rights in the mark at issue in order to prove standing. *Id.*

Nevertheless, opposer here has provided no evidence of its standing to oppose applicant's registration. Having introduced no evidence into the record, opposer has failed to establish any information regarding opposer or its business and how opposer may be damaged by applicant's registration. Opposer pleaded several registrations in its

original and amended notices of opposition. However, opposer did not introduce those registrations into the record. That is, opposer introduced no evidence during its testimony period to show that it is the owner of its pleaded registrations and that the registrations are valid and subsisting in accordance with Trademark Rule 2.122(d); 37 CFR §2.122(d). The Board does not take judicial notice of registrations, and opposer must properly introduce its pleaded registrations into the record. *See, e.g., Demon Int'l LC v. Lynch*, 86 USPQ2d 1058, 1060 (TTAB 2008) (opposition dismissed where opposer failed to submit proper status and title copies of its pleaded registrations and thus failed to prove standing); *Weyerhaeuser Co. v. Katz*, 24 USPQ2d 1230, n.2 (TTAB 1992). Furthermore, there is nothing in applicant's pleadings that admits opposer's standing.

Accordingly, we find that opposer has not established its standing to oppose the registration. Because opposer has not established its standing, opposer has shown no right to relief on its claims.

DECISION: The opposition is dismissed.