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

Proceeding	91169211
Party	Defendant San Francisco Women's Motorcycle Contingent San Francisco Women's Motorcycle Conting ent 633 Castro Street San Francisco, CA 94114
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

MICHAEL J. McDERMOTT,

Opposer,

v.

SAN FRANCISCO WOMEN'S MOTORCYCLE CONTINGENT,

Applicant.

Opposition No. 91169211

MOTION TO DISMISS OPPOSITION

[CORRECTED CAPTION]

I. INTRODUCTION

Michael McDermott ("Opposer" or "McDermott") filed the sole opposition to Applicant San Francisco Women's Motorcycle Contingent's ("SFWMC") application for the mark "Dykes on Bikes." To prevail, Mr. McDermott must identify how he will be harmed by the proposed registration of the mark and his grounds for any legitimate objection. The opposition consists entirely, however, of Mr. McDermott's political diatribe, often relating to organizations, political activities or issues with which SFWMC has no relationship. His comments have nothing to do with the trademark that is the subject of the application and are directed instead at the dyke community at large, and to the Dyke March in particular, which is organized by a distinct and separate entity from the SFWMC. Whether they are real or imagined, the Trademark Trial and Appeal Board is not the forum for Mr. McDermott's grievances.

As becomes plain from a review of the pleading, there is no proper purpose to be served by entertaining Mr. McDermott's opposition. SFWMC should not have to suffer the delay or the costs that would attend the full hearing of an opposition whose only purpose is a public and political assault on the dyke community. There are no circumstances, based on the allegations made, under which Mr. McDermott's opposition might succeed. SFWMC, accordingly, asks the Board to dismiss this opposition without leave for further amendment.

II. MR. MCDERMOTT FAILS TO MEET PLEADING REQUIREMENTS FOR A VALID OPPOSITION

While the pleading requirements for stating a valid opposition are not onerous, they do require a "short and plain statement" showing: (1) standing (namely that the opposer will be damaged by registration of the proposed mark) and (2) the grounds for opposition. 37 C.F.R. § 2.104(a). Standing and grounds for opposition are separate elements, and the opposition must provide enough detail to give the applicant fair notice of each. *Young v. AGB Corp.*, 152 F. 3d

1377, 1378 (Fed. Cir. 1998) (Fed. Cir. 1998); *McDonnell Douglas Corp. v. National Data Corp.*, 228 U.S.P.Q. 45, 47 (TTAB 1985).

Mr. McDermott's notice meets neither requirement. He fails to show any legally sufficient interest in the outcome of the application, and he fails to identify any proper or intelligible grounds for his opposition.

A. Opposer Lacks Standing.

An opposer must identify a "real interest" in the proceedings and "a reasonable basis" for believing that he will suffer damage if the proposed mark is registered. *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F. 2d 1024, 1028-29 (CCPA 1982). "The purpose in requiring standing is to prevent litigation … where a plaintiff, petitioner or opposer is no more than an intermeddler." *Id.* Examples of an adequate interest include claims of likely confusion between the opposer's and the Applicant's products; claims that the opposer's proposed registration may be or has been refused on the strength of the Applicant's proposed registration; claims that the opposer intends to use the same mark for related goods; and claims that the proposed mark is descriptive or generic and that the opposer intends to use the term in his or her business. TBMP § 309.03(b).

Mr. McDermott has not alleged any of these interests or any other adequate interest. Rather, his notice of opposition reflects only the characteristics of an "intermeddler." Mr. McDermott charges that "I and ALL other MALE Citizens are subject to Criminal Attack and Civil Rights Violations committed by 'Dykes' taking part in [a] Anti Male Hate Riot, including attacks often led or inspired by members of 'Dykes on Bikes.'" Opposition at 1 (emphasis in original). Mr. McDermott claims that he was "FORCED FROM A CROSSWALK" during a 1998 "Dyke March" in which some of Applicant's membership purportedly participated. Opposition at 5 (emphasis in original). He makes several vague references to unidentified

groups "illegally" clearing the streets of men (e.g. Opposition at 5, 7 and 8). He claims that part of supposed "dyke" hate propaganda includes use of the terms "straight," "vanilla" and "pig" to describe men. Opposition at 10. Finally, he makes various allegations regarding the "Take Back the Night" march, without specifying any way in which these allegations have any bearing on this matter or any relationship to the applicant. Opposition at 14.

SFWMC acknowledges that, however irrational or implausible the allegations, they must be accepted as true for the purposes of a motion to dismiss. *Young v. AGB Corp.*, *supra,* 152 F. 3d at 1379 (Fed. Cir. 1998). But, this does not relieve opposer of the obligations to plead the elements essential to his claim, including standing. *Lipton Industries, Inc. v. Ralston Purina Co.*, *supra*, 670 F. 2d at 1028 ("if [the opposition] does not plead facts sufficient to show a personal interest in the outcome …, the case may be dismissed for failure to state a claim."). Mr. McDermott, however, links none of the supposed harms in any way with the application for registration. For example, Applicant is not the sponsor or producer of the Dyke March or the Take Back the Night March, nor does Mr. McDermott allege that it is. Because the claimed harms have nothing to do with Applicant's use of the mark or its application for registration, Mr. McDermott's purported interest in the application is plainly nothing more than another platform in which to air his political views, not a genuine personal stake in the application. In sum, Mr. McDermott has no legally cognizable interest in the mark; as a result, his opposition fails to state any valid claim.

Mr. McDermott confirms his lack of personal interest by identifying no relief the Board might award that has anything to do with the claimed harms. No action the Board takes on the pending application will have any effect on the political activities of dykes generally, or any of the specific instances cited by Mr. McDermott. Even if, pursuant to the legal standards for a motion to dismiss, Mr. McDermott's allegations about his experiences at the rallies and marches

he has attended are taken as factual, remedies for the claimed wrongs are unrelated to applicant's trademark rights. Denying SFWMC's application to register its trademark would not alter, even if they are all true, a single experience Mr. McDermott has recited in the notice of opposition. Again, without a personal interest in the outcome of an issue related to registrability of the mark, Mr. McDermott has no right to object.

Mr. McDermott's claims are so far afield from the application that the Board lacks jurisdiction to consider them. He primarily attacks the "Ongoing Criminal and Civil Rights Violations committed by 'Dykes on Bikes' and All Dykes who participate in the annual Illegal Anti Male Hate Riot/Takeover of Public Lands culminating in the Illegal 'San Francisco Dyke March…'" Opposition at 3 (emphasis in original). He argues that the San Francisco police are complicit in the alleged illegal activities and that the Vehicle Code and permit requirements are not followed or enforced against various dyke marches and rallies. Opposition at 4-8. The Board does not have jurisdiction to entertain any of these charges. *Time Warner Entertainment Co. v. Karen L. Jones,* 65 U.S.P.Q. 2d 1650, 1664 (TTAB 2002)(Board has no jurisdiction to consider antitrust claims); *Yasumoto & Co. v. Commercial Ball Pen Co., Inc.* 184 U.S.P.Q. 60, 61 (TTAB 1974)(same); *American-International Travel Service, Inc. v. AITS, Inc.*, 174 U.S.P.Q. 175, 179 (Board lacks jurisdiction to consider claimed criminal violations).

If Mr. McDermott is aggrieved as he claims to be, he has recourse in any number of venues, political and legal, against whomever has committed the alleged criminal and civil rights violations. As a "Men's Civil Rights Advocate" with "decades" of experience, no doubt Mr. McDermott is aware of methods and avenues for appropriate redress. The Trademark Trial and Appeal Board, however, is not such a venue and -- unless Mr. McDermott can make some credible claim that he alone has the right to identify himself as "Dykes on Bikes" or that he holds

some other right that would be compromised by the proposed registration-- his opposition must be dismissed.

B. Mr. McDermott Has Not Identified Any Legally Sufficient Grounds For Refusing The Registration.

The Notice of Opposition makes no specific reference to a ground for refusing the application as is required for the opposition to proceed. Instead, he invites the PTO to refuse the requested registration on the grounds that dykes, including Applicant, are not worthy of government "approval." McDermott asserts -- introducing a theme that runs throughout the opposition -- that the USPTO should not be "pandering to such 'Dykes', whether on Motorcycles or not." Opposition at 3. More grandly, he states that the USPTO must not "act as a Political Agent of the Misandry Lobby, by granting approval to their [sic] usage of the term 'Dyke', so as to provide them [sic] with Government Backing For Thought & Speech Policing throughout America." Id. Other similar comments are pervasive throughout the notice of opposition:

- "The Dyke Hate Riot purpose is the acting out their political agenda of Misandry 'BAMN BAMN' - To 'Bash Men - By Any Means Necessary,' and *for this they now desire a Government seal of Trademark Approval.*" Opposition at 5 (emphasis in original; italics added).

- "*The promotion of Misandry*, like the rewarding of illegal behavior, regardless of its form, is *Not a function of USPTO, and should provide all the grounds needed to Deny this Application for good cause*." Opposition at 9 (emphasis in original; italics added).

- "The attempt to use this Trademark to further the goals of Separatist/Neo Exterminationist Misandrists (Exhibit #7), as well as Sadists and Sado-Masochistic Bondage and Flogging Fanatics (Exhibit #9) such as 'Dykes on Bikes' leader Vic [sic] Germany, *is a shameful abuse of the trademark process.*" (Opposition at 9-10) (emphasis in original; italics added).

- "It is this Separatist, Misandrist, Neo-Exterminationist Agenda that is at the core of Dyke Political Activism, *and which the USPTO is in danger of ratifying with approval.*" Opposition at 12 (emphasis in original; italics added).

Mr. McDermott seems to be far more concerned with actions and statements by individuals that participate in the dyke movement -- "whether on motorcycles or not" -- than

anything that is part of Applicant SFWMC's "agenda." Putting aside the vigorous challenge that Applicant would mount to Mr. McDermott's allegations outside the context of a motion to dismiss, Mr. McDermott's worries that the USPTO might "ratify" dyke or any other political behavior by registering the proposed mark is no ground for refusing it. It is well settled that registration of a trademark reflects no endorsement by the USPTO whatsoever of the Applicant, its products, its trademark, or -- in this case -- its political activities. *In re Old Glory Condom Corp.*, 26 U.S.P.Q. 2d 1216, 1221 (TTAB 1993); *Harjo v. Pro-Football, Inc.*, 50 U.S.P.Q. 2d 1705, 1749 (TTAB 1999), *rev'd on other grounds* 284 F.Supp. 2d 96 (D.D.C. 2003).

In the *Old Glory* case, the opposer charged that the TTAB would be impliedly blessing the use of an American flag on condoms if it allowed registration of the proposed mark. In reversing the examiner's conclusion that the mark should be refused registration, the TTAB commented as follows, in language that disposes of each of Mr. McDermott's identified "grounds" for opposition:

> "In this case, … we have detected an undercurrent of concern that the issuance of a trademark registration for applicant's mark amounts to the awarding of the U. S. Government's "imprimatur" to the mark. Such a notion is, of course, erroneous. The duty of this Office under the Trademark Act in reviewing applications for registration is nothing more and nothing less than to register those marks that are functioning to identify and distinguish goods and services in the marketplace, as long as those marks do not run afoul of any statutory provision that would prohibit registration. Moreover, the registration scheme of the Trademark Act is one more inclined to inclusion than exclusion, the obvious idea being to give as comprehensive a notice as possible, to those engaged in commerce, of the trademarks and service marks in which others have claimed rights. Just as the issuance of a trademark registration by this Office does not amount to a government endorsement of the quality of the goods to which the mark is applied, the act of registration is not a government imprimatur or pronouncement that the mark is a "good" one in an aesthetic, or any analogous, sense."

In re Old Glory Condom Corp., 26 U.S.P.Q. at 1220 n.3.

Nothing in the Notice of Opposition identifies any basis for concluding that the USPTO has failed to discharge its statutory duties in passing the application for registration. Mr. McDermott's personal political views and subjective emotional reactions have no place in an opposition to registration of a trademark. Without a plainly stated ground by which registration should have been refused, the opposition must be dismissed.

III. CONCLUSION

Mr. McDermott has failed to assert either a stake in the proposed trademark or any valid ground for opposition. Further, because Mr. McDermott's objections are all patently irrelevant to the Board's duties and instead relate solely to his subjective political agenda, this is not a case in which the failure to state a valid ground can be cured by amendment of Mr. McDermott's opposition. See *Institut National des Appellations d'Origine v. Brown-Forman Co.*, 47 U.S.P.Q. 2d 1875, 1896 (TTAB 1998) (leave to amend should be denied when the amendment would be futile). For that reason, the opposition should be dismissed with prejudice and -- as this is the lone objection to the mark -- Applicant's mark should proceed to registration.

Respectfully submitted,

DATED: April 5, 2006

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