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

Proceeding	91177540
Party	Defendant OnPoint Community Credit Union OnPoint Community Credit Union 2701 NW Vaughn St., Ste. 800 Portland, OR 972083750
Correspondence Address	STEPHEN F. COOK BULLIVANT HOUSER BAILEY PC 888 SW 5TH AVE STE 300 PORTLAND, OR 97204-2089 UNITED STATES
Submission	Motion to Dismiss - Rule 12(b)
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Date	06/21/2007
Attachments	OnPoint Motion to Dismiss.pdf (5 pages)(21148 bytes)

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

Point Mortgage,)	Opposition No.: 91177540
)	
Opposer,)	
)	
v.)	<u>APPLICANT’S MOTION TO DISMISS</u>
)	
OnPoint Community Credit Union,)	
)	
Applicant.)	

**MOTION TO DISMISS
AND MEMORANDUM IN SUPPORT**

Applicant moves to dismiss the opposition under Fed.R.Civ.P. 12(b)(6) and TBMP § 503 *et seq.* for failure to state a claim for which relief may be granted.

MEMORANDUM

Opposer Point Mortgage filed an admirably succinct opposition, reproduced here in its entirety.

To whom it may concern:

Let this letter serve as a notice of opposition. Point Mortgage is a License lender in the state of Florida and is pending license in the state of California.

We believe that the Mark OnPoint Mortgage will have a conflict with our Mark Point Mortgage. If you have any questions regarding this matter you can contact me at the below referenced number.

*Sincerely,
Johnny Margarini
President*

Applicant recognizes that Opposer is not represented by counsel and may not be familiar with trademark practice and procedure. Nonetheless, for good reason, “strict compliance with

the Trademark Rules of Practice and, where applicable, the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel.” *McDermott v. San Francisco Women’s Motorcycle Contingent*, 81 USPQ2d 1212, 1213 n. 2 (TTAB 2006).

While the pleading requirements for stating a valid opposition are not onerous, they do require a short and plain statement alleging such facts as would, if proved, establish that the plaintiff is entitled to the relief sought, that is, that (1) the plaintiff has standing to maintain the proceeding, and (2) a valid ground exists for denying the registration sought. 37 C.F.R. § 2.104(a); *Young v. AGB Corp.*, 47 USPQ2d 1752, 1754 (Fed. Cir. 1998); TBMP § 503.02 (2d ed. Rev. 2004).

Standing and grounds for opposition are two separate elements, and the opposition must provide enough detail to give the applicant fair notice of each. *Young*, 47 USPQ2d at 1754; *McDonnell Douglas Corp. v. National Data Corp.*, 228 USPQ 45, 47 (TTAB 1985).

I. Opposer Has Failed To Allege Facts To Confer Standing

Standing is a threshold and basic inquiry made by the Board in every inter partes case. TBMP § 309.03(b) (2d ed. rev. 2004). The opposer bears the burden of establishing that it has standing to oppose the registration of a trademark. *Ritchie v. Simpson*, 50 USPQ2d 1023, 1095 (Fed. Cir. 1999); *Lipton Industries, Inc. v. Ralston Purina Co.*, 213 USPQ 185, 186 (CCPA 1982). Here, Opposer has not alleged sufficient facts to confer standing.

The statute conferring standing permits “[a]ny person who believes that he would be damaged by the registration of a mark upon the principal register” to file an opposition by paying the required fee and stating the grounds for the opposition. 15 U.S.C. § 1063. An opposer must satisfy two judicially-created standing requirements: the opposer (1) must have a “real interest” in the proceedings, and (2) must have a “reasonable” basis for his belief of damage. *Ritchie*, 50 USPQ2d at 1025.

Opposer has alleged that it owns the mark POINT MORTGAGE, that it is a “License lender” in Florida and is “pending license in the state of California.” Opposer then alleges that Applicant’s ONPOINT MORTGAGE mark “will have a conflict with” Opposer’s POINT MORTGAGE mark. Those allegations are the sum total of Opposer’s opposition.

The Board must liberally construe these allegations. Fed.R.Civ.P. 8(f). Liberally

construed, Opposer has plead a “real interest” in opposing the registration of Applicant’s mark. Opposer adequately alleges a subjective belief that Applicant’s mark will “conflict with” Opposer’s mark. *Ritchie*, 50 USPQ2d at 1095 (“real interest” requirement satisfied when opposer has “a legitimate personal interest in the opposition.”).

Opposer has not, however, plead any facts to support a “reasonable” basis for the belief that it will be harmed by the registration of Applicant’s mark. More than a subjective belief of harm is required. *Ritchie*, 50 USPQ2d at 1098 (belief of harm requires “more than a subjective belief ... and must have a reasonable basis in fact.”) (internal quotations omitted). An opposer must plead facts, not abstract opinion, in support of its belief that it will be harmed by another’s trademark registration. *Ritchie*, 50 USPQ2d at 1098 (the facts asserted must “show that the opposer is not alone in his belief of damages,” that showing being met by alleging objective evidence.)

This obligation to plead objective facts to support the belief that it will be harmed presupposes that the Opposer has indeed alleged that registration of the Applicant’s mark would cause harm. Opposer has made no such allegation. Just as fundamentally, Opposer does not even allege it is using its mark in commerce. From the very start, therefore, Opposer cannot have—and, therefore, cannot plead—any reasonable basis to believe that it will be harmed by the registration of Applicant’s mark. Absent an allegation of harm caused by Applicant’s registration or of Opposer’s use of its mark in commerce, Opposer is simply an intermeddler with no interest to protect and, therefore, no harm to be concerned about.

Not surprisingly, Opposer’s opposition is wholly devoid of any facts in support of its non-existent allegation that it would be harmed by the registration of Applicant’s mark. Opposer has not plead any facts to establish how, or on what goods or services, it uses its POINT MORTGAGE mark and does not allege how or why the registration of Applicant’s mark would cause it harm.

II. Opposer Has Failed To Allege A Valid Ground To Deny Registration

Opposer must also plead a valid ground for denying registration to Applicant’s mark. 37 C.F.R. § 2.104(a); *Young*, 47 USPQ2d at 1754. A “valid ground” for denying registration must be a “statutory ground which negates the appellant’s right to the subject registration.” *Young*, 47 USPQ2d at 1380. Opposer has not alleged any statutory ground for denying registration.

Opposer alleges only that “*We believe that the Mark OnPoint Mortgage will have a conflict with our Mark Point Mortgage.*” There is, however, no statutory authority to deny registration to a mark because it has “a conflict” with another mark. Applicant is not required to—and will not—guess at what Opposer means by its allegation.

As a practical matter, moreover, Applicant can neither respond adequately to this ambiguous allegation nor meaningfully prepare for or present a defense to the allegation.

III. Conclusion

Opposer has failed to allege that it would be harmed by the registration of Applicant’s mark or plead any facts in support of such an allegation. In addition, Opposer has failed to allege any statutory ground for denying registration. Accordingly, Applicant requests that the Opposition be dismissed for failure to state a claim upon which relief may be granted.

Date: June 21, 2007

Respectfully Submitted,

By: /s/ Stephen F. Cook

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Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing MOTION TO DISMISS has been served on Point Mortgage c/o Johnny Margarini by mailing said copy on June 21, 2007, via First Class Mail, postage prepaid to:

Johnny Margarini
Point Mortgage
9999 Snsset Dr., #208
Miami, FL 33173

/s/ Becky Haines
Becky Haines