

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Goodman

Mailed: February 10, 2009

Opposition No. **91187644**

Mother's Nutritional Center,  
Inc.

v.

Stork Store LLC

Before Holtzman, Cataldo and Ritchie, Administrative  
Trademark Judges.

By the Board:

This case now comes up on applicant's motion to  
dismiss, filed December 22, 2008. The motion is fully  
briefed.

Applicant argues that the notice of opposition is  
deficient because the allegations of harm in respect of  
standing are "conclusory" and opposer has "failed to  
properly articulate facts supporting a cause of action upon  
which relief can be granted." In particular, applicant  
asserts that opposer has provided a "bare pleading" which  
lacks "any degree of specificity" and alleges "no facts in  
support of Plaintiff's claim." Applicant also argues with  
respect to standing, that opposer is an intermeddler and  
with respect to likelihood of confusion, that the parties'  
marks "are sufficiently distinct to prevent any confusion"

and there is "simply no nexus" between the parties' customers as "one business is a grocery store and the other provides educational services and high-end, eco-friendly products to mothers of new born babies."

In response, opposer argues that it has alleged sufficient facts in paragraphs 1, 3, and 6-7 of the notice of opposition which, if proved, establish a reasonable belief in damage. With regard to its likelihood of confusion claim, opposer asserts that it has sufficiently alleged its ownership, priority of use, and likelihood of confusion by the allegations in paragraphs 2-3 and 5-7 of the notice of opposition. Opposer also points out that applicant's arguments regarding the similarity of the parties' marks and whether confusion is likely are improper and should be disregarded "for purposes of evaluating the motion" and that assuming the allegations are true, they "are sufficient to satisfy the relevant pleading requirements. . . ."

In reply, applicant agrees that "facts in the pleadings . . . must be accepted as true for the purpose of deciding the instant motion" but argues that the Board "need not agree with the legal conclusions drawn in Plaintiff's pleadings."

In order to avoid dismissal at this stage of the proceeding, opposer need only allege such facts as would, if

proved, establish that opposer is entitled to the relief sought. Therefore, opposer must allege that (1) it has standing to bring the proceeding, and (2) a valid ground exists for denying the registration sought. See TBMP § 503.02 (2d ed. rev. 2004). For purposes of a motion to dismiss, all of opposer's well pleaded allegations in the opposition must be accepted as true. *Id.*

With regard to the requirements for pleading, Fed. R. Civ. P. 8(a), as made applicable by Trademark Rule 2.116(a), in relevant part requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." Thus, "[t]he elements of a claim should be stated concisely, and directly ... and should include enough detail to give the defendant fair notice of the basis for each claim." TBMP § 309.03(a). "While the lack of intimation of any facts underlying a claim will justify dismissal, ... mere vagueness or lack of detail is an inadequate basis for granting a motion to dismiss." *McMath v. City of Gary, Ind.* 976 F.2d 1026, 1031 (7<sup>th</sup> Cir. 1992).

Opposer in this case has sufficiently pleaded its standing to pursue the opposition by its allegations of damage in the preamble coupled with its allegations in the notice of opposition of ownership of a "Stork logo mark" (used in connection with retail grocery store services),

priority, and likelihood of confusion.<sup>1</sup> See *William & Scott Co. v. Earl's Restaurants Ltd.*, 30 USPQ2d 1870, 1873 n.2 (TTAB 1994) (opposer's allegations of priority and likelihood of confusion "constitute a legally sufficient pleading" of opposer's real interest in the proceeding for purposes of standing).

With regard to the likelihood of confusion claim, we find that opposer has sufficiently alleged facts for priority of use and likelihood of confusion in paragraphs 2-3 and 5-7 of the notice of opposition that if proved, would entitle opposer to relief.

With regard to applicant's argument that opposer has not alleged sufficient facts to support its claims, we find that the notice of opposition satisfies the pleading requirement of Fed. R. Civ. P. 8(a) and gives applicant fair notice of the claims. Applicant's complaint as to the lack of detail in the notice of opposition is not, as stated above, a basis for dismissal. Such information, instead, can be appropriately obtained through discovery.

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<sup>1</sup> Applicant has argued the merits of opposer's standing and likelihood of confusion claim in its motion to dismiss. Because the scope of what may be considered on a motion to dismiss is limited to the legal sufficiency of the complaint, such arguments have not been considered in deciding the motion.

In view thereof, applicant's motion to dismiss is denied.<sup>2</sup>

Applicant's answer is noted.

Proceedings are resumed.

The discovery conference, disclosure, discovery and trial dates are reset as follows:

Deadline for Discovery Conference	3/14/09
Discovery Opens	3/14/09
Initial Disclosures Due	4/13/09
Expert Disclosures Due	8/11/09
Discovery Closes	9/10/09
Plaintiff's Pretrial Disclosures	10/25/09
Plaintiff's 30-day Trial Period Ends	12/9/09
Defendant's Pretrial Disclosures	12/24/09
Defendant's 30-day Trial Period Ends	2/7/10
Plaintiff's Rebuttal Disclosures	2/22/10
Plaintiff's 15-day Rebuttal Period Ends	3/24/10

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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<sup>2</sup> The parties are reminded that a motion for summary judgment cannot be filed until after a party has made its initial disclosures. Trademark Rule 2.127(e).