

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Napa Valley Vintners Association

v.

Wine Vision, Lda.

Opposition No. 91189310
to Application Serial No. 77578500

J. Scott Gerien of Dickenson, Peatman & Fogarty for Napa Valley Vintners Association.

Wine Vision, Lda., *pro se*.

Before Cataldo, Wolfson and Adlin, Administrative Trademark Judges.

Opinion by Adlin, Administrative Trademark Judge:

Wine Vision, Lda. (“Applicant”) seeks registration of the mark NOPA, in standard characters, for “wines.”¹ In its notice of opposition, Napa Valley Vintners Association (“Opposer”) alleges that it owns and has prior rights in the “common

¹ Application Serial No. 77578500, filed September 25, 2008, based on Applicant’s allegation of an intent to use the mark in commerce under Section 1(b) of the Trademark Act. The application includes the following translation statement: “The wording ‘NOPA’ has no meaning in a foreign language.”

law certification marks NAPA and NAPA VALLEY for wine.” Notice of Opposition (“NOO”) ¶ 2. As grounds for opposition, Opposer alleges that Applicant’s mark: (1) is likely to cause confusion with Opposer’s marks; (2) comprises a geographical indication which, when used on or in connection with wines, identifies a place other than the origin of the goods in violation of Section 2(a) of the Trademark Act; (3) is geographically deceptive in violation of Section 2(a) of the Act; and (4) is primarily geographically deceptively misdescriptive in violation of Section 2(e)(3) of the Act. *Id.* ¶¶ 3-7. In its answer, Applicant “admits that ‘Napa’ constitutes a geographical indication for wine,” Answer ¶ 5, but otherwise denies the salient allegations in the notice of opposition, and raises a number of “Affirmative Defenses” which are in fact merely amplifications or rephrasings of Applicant’s denials. In any event, Applicant did not pursue any of its alleged affirmative defenses, which are accordingly waived and will be given no further consideration. *Miller v. Miller*, 105 USPQ2d 1615, 1616 n.3 (TTAB 2013); *Baroness Small Estates Inc. v. American Wine Trade Inc.*, 104 USPQ2d 1224, 1225 n.2 (TTAB 2012).

The Record

The record consists of the pleadings, the file of the involved application and Opposer’s Notice of Reliance (“NOR”) (TTABVue Dkt. # 45) on: (1) sections of the Code of Federal Regulations (“CFR”) containing certain rules issued by the U.S. Treasury Department’s Alcohol and Tobacco Tax and Trade Bureau (“TTB”) relating to the labeling and advertising of wine; and (2) excerpts from eight books, all of which “will be used to demonstrate that Napa Valley is recognized as a well-known

wine growing appellation and geographical indication and that ‘Napa Valley’ is also commonly referred to as ‘Napa.’” Opposer’s NOR ¶¶ 1-9 and Exs. 1-9. Applicant did not object to any of Opposer’s evidence or introduce any testimony or other evidence of its own. Only Opposer filed a trial brief.

Standing

Standing is a threshold issue that must be proven, rather than merely alleged, in every *inter partes* case. *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 1028, 213 USPQ 185, 189 (CCPA 1982). *See also Yamaha Int’l Corp. v. Hoshino Gakki Co., Ltd.*, 231 USPQ 926, 931 (TTAB 1986) (“Standing to oppose is an essential element of proof in opposition proceedings”), *aff’d*, 840 F.2d 1572, 6 USPQ2d 1001 (Fed. Cir. 1988). In order to prove its standing, Opposer must establish that it has a “real interest,” i.e., a “personal stake,” in this proceeding, beyond that of a mere intermeddler. *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1025-26 (Fed. Cir. 1999); *Lipton Industries*, 213 USPQ at 189 (TTAB 1982).

Opposer argues in its brief that it has standing, but does not cite any evidence in support of the argument:

Opposer, as the non-profit trade association promoting the interests of NAPA VALLEY wineries and wines from the NAPA VALLEY appellation of origin, and as the owner of a pending application for the geographical certification mark NAPA VALLEY wine, will be harmed by the registration of the NOPA mark for wine on the basis that it is geographically deceptive and misdescriptive and is confusingly similar to the abbreviation for the recognized geographical indication NAPA VALLEY. Accordingly, Opposer has standing to bring this action.

Opposer's Trial Brief at 3. The record provides no support for Opposer's argument that it has standing.

In fact, there is no evidence of record that Opposer is a trade association, what its responsibilities are, who its members are or whether it certifies anything and if so how it does so, much less whether it owns the alleged certification mark NAPA VALLEY. Opposer's alleged application to register a certification mark is not of record.² In any event, Opposer did not plead ownership of an application in its notice of opposition; rather, the notice of opposition only references a "common law certification mark," about which there is also no evidence of record. Nor is there evidence of record that Opposer owns *any* mark.

The CFR sections of record reference the Napa Valley viticultural area, but not Opposer, its activities, or any certification mark or other mark related to Napa Valley. Similarly, the book excerpts of record reference Napa Valley, but it appears that only the excerpt from *The Global Encyclopedia of Wine*, which is over 10 years old, mentions Opposer, and that excerpt merely states that "During Napa's evolution the Napa Valley Vintners Association, formed in 1943, and the Napa Valley Grape Growers Association (1975), were integral at marketing and improving the region's wines." Opposer's NOR Ex. 7. This evidence does not establish what Opposer's *current* activities are, if any, and therefore cannot

² "[I]t is well settled that the Board does not take judicial notice of USPTO records," such as applications and registrations. *UMG Recordings Inc. v. O'Rourke*, 92 USPQ2d 1042, 1046 (TTAB 2009).

establish Opposer's standing. Applicant's answer does not contain any admissions which would establish Opposer's standing.

We may not find standing based on mere speculation. Evidence is required, but is absent here. *Melwani v. Allegiance Corp.*, 97 USPQ2d 1537, 1542-43 (TTAB 2010) ("opposer does not have standing in this proceeding because there is neither an admission of standing by applicant nor record evidence that otherwise establishes opposer's standing"). Accordingly, Opposer has failed to establish its standing.

Conclusion

In an opposition proceeding, the opposer bears the burden of proving both its standing to oppose and at least one valid ground for refusal of registration. A plaintiff may not simply rely on legal argument in a brief. Rather, a plaintiff must establish its standing and the elements of a claim through competent evidence. TBMP § 704.06(b) (2014). Here, Opposer has not introduced any evidence establishing that it has standing. Because Opposer has not established its standing to bring this opposition, it cannot prevail on any of the grounds alleged in its notice of opposition.

Decision: The opposition is dismissed.