

2. The Opposition was sent by certified mail to the address on record with the Board.
3. Applicant response was due on November 2, 2009.
4. Applicant has failed to respond to the Opposition or seek an extension of time in which to respond de Opposition.

ARGUMENT

I. THE OPPOSITION IS DEEMED ADMITTED

Applicant has failed to respond to the Opposition under the trial dates set by the Trademark Trial and Appeal Board . Further Applicant has failed to move the Board for an order extending the time in which to respond to the Opposition. nor for a protective order pursuant to FRCP 26 (c).

Therefore, pursuant to FRCP 36 (b) and TBMP § 508, the opposition filed is deemed admitted. Accordingly, applicant has admitted:

1. Opposer is the legal authorized company to exploit, commercialize, and use the artistic name Pedro Infante (admission no. 1);
2. PEDRO INFANTE is the artistic name of the deceased JOSE PEDRO INFANTE CRUZ (admission no. 2) and therefore is world wide known solely as PEDRO INFANTE (admission no. 3);
3. Applicant's mark is confusingly similar to Opposer's mark and is likely, when used may falsely suggest a connection with PEDRO INFANTE a dead person for whose artistic name rights are authorized for use by the Opposer (Admission no. 4).

4. Opposer would be damaged by registration of the applied for mark (admission no. 5).

II. NO GENUINE ISSUE OF FACT EXISTS

Summary Judgment is an appropriate method of disposing of cases in which there are no genuine issues of material fact in dispute. FRCP 56 (c). A factual dispute is genuine if, on the record, a reasonable fact finder could resolve the matter in favor of the non-moving party. *Opryland USA Inc. v. Great American Music Show Inc.* 23 USPQ 2d 1471 (Fed. Cir. 1992).

The Notice of Opposition alleges that the applied-for mark is confusingly similar to Opposer's mark, and likely when used may falsely suggest a connection with PEDRO INFANTE a dead person for whose artistic name rights are authorized for use by the Opposer, therefore the applied-for mark is unregistrable under §2 (a) of the Trademark Act.

Applicant has admitted Opposer is the legal authorized company to exploit, commercialize, and use the artistic name Pedro Infante (admission no. 1) and that PEDRO INFANTE is the artistic name of the deceased JOSE PEDRO INFANTE CRUZ (admission no. 2) and therefore is world wide known solely as PEDRO INFANTE (admission no 3). Further Applicant has admitted that his mark is confusingly similar to Opposer's mark and is likely, when used may falsely suggest a connection with PEDRO INFANTE a dead person for whose artistic name rights are authorized for use by the Opposer (admission no. 4) and that Opposer would be damaged would be damaged by registration of the applied for mark (admission no. 5).

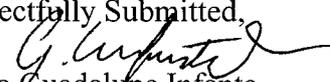
Accordingly, no genuine issue of material fact is in dispute and Opposer is entitled to summary judgment,

CONCLUSION

For the foregoing reasons Opposer requests an Order of Summary Judgment sustaining the Opposition and refusing registration of the mark show in application serial no. 77-561682.

Dated December 22, 2009

Respectfully Submitted,


Maria Guadalupe Infante
Ricardo Palma 2744
Lomas de Guevara
Guadalajara, Jalisco 44657
MEXICO
(52) 333-36417173

Certificate of Service

I hereby certify that on December 22, 2009, I served the foregoing OPPOSER'S MOTION FOR SUMMARY JUDGMENT by delivery to the Mexican Postal Service, as certified mail in an envelope addressed to:

Alejandro Ernesto Hernández Campirano
Xochitl 243
Ciudad del Sol, Zapopan
Jalisco, 45050
MÉXICO


Maria Guadalupe Infante

2. Upon information and belief, Applicant Alejandro Ernesto Hernandez Campirano ("Applicant") is an individual with an address at Xochitl 243, Col Ciudad del Sol, Zapopan 45050, Mexico.
3. Opposer is owner of US Trademark Application 77-579837 TEQUILA PEDRO INFANTE AÑEJO 50 HECHO EN MEXICO designed for use in Tequila, as well as owner of Mexican Trademark Application 1051681 PEDRO INFANTE y Diseño. A copy of the application and registration are annexed hereto as exhibits A and B respectively.
4. Opposer is the legally authorized company to exploit, commercialize, and use the artistic name Pedro Infante, due to the authorization given by the owners of such rights. A copy of the authorization and the documents of the name's ownership are annexed hereto as exhibits C and D respectively.
5. On September 3, 2008 Applicant filed an application in the United States Trademark Office to register the trademark PEDRO INFANTE SPECIAL for use on alcoholic beverages except beers.
6. On June 16, 2009 acting on said Application, Applicant answered an office action stating that there is no intention to connect the deceased famous actor and singer with his trademark. It is to be made clear that even though the complete name of said person is JOSE PEDRO INFANTE CRUZ, is world wide known artistically as PEDRO INFANTE, authorization for which Opposer has in terms of the annexed exhibits. A copy of several documents which confirm that JOSE PEDRO INFANTE CRUZ is known solely as PEDRO INFANTE are annexed hereto as exhibit E. A copy of PEDRO INFANTE'S album covers are annexed hereto as exhibit F to demonstrate he was know solely as PEDRO INFANTE for being that his artistic name.

7. Applicant's applied-for mark is confusingly similar to Opposer's mark and is likely, when used may falsely suggest a connection with PEDRO INFANTE a dead person for whose artistic name rights are authorized for use by the Opposer, and Applicant's mark is thus unregistrable under § 2 (a) of the United States Trademark act, 15 U.S.C. § 1052(a).
8. The mark applied-for by Applicant suggests a connection with the artistic name of PEDRO INFANTE without permission of the Opposer.
9. Opposer will be damaged by Applicant's registration of the mark shown in the Opposed Application because registration will give prima facie evidence of the ownership for the rights to use the name PEDRO INFANTE in commerce, which is an artistic named authorized for its use in commerce to the Opposer.

WHEREFORE, Oposser prays for a judgement sustaining this opposition refusing the registration of the mark shown in Applican Serial No. 77-561682.

Dated: September 22, 2009

Respectfully Submitted,

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