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

Proceeding	91200183
Party	Defendant Miss G-String International LLC
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Date	09/04/2012
Attachments	Petitioner's Response to Alleged Registrant's Motion to Dismiss - as filed.pdf (9 pages)(331447 bytes)

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

In the matter of Trademark Registration No. 2,037,202 for the mark MISS NUDE INTERNATIONAL, registered on February 11,1997 and Registration No. 3,039,826 for the mark MISS NUDE WORLD, registered on January10, 2006.

Opposition No. 91,200,183	**Cancellation No. 92,055,838**
The Worlds Pageants, LLC	William Eadie
Opposer	Petitioner
V.	V.
Miss G-String International LLC	The Worlds Pageants, LLC
Applicant	Registrant

September 4, 2012

_____/

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

PETITIONER'S RESPONSE TO ALLEGED REGISTRANT'S MOTION TO DISMISS AND MOTION FOR LEAVE TO FILE AMENDED PETITION TO CANCEL

1. Petitioner William Eadie, hereby responds to alleged Registrant's Motion To Dismiss and moves the Board for an Order permitting him to file an Amended Petition to Cancel to correct a scrivener's error.

I. INTRODUCTION

2. On July 10, 2012 Petitioner filed his Petition to Cancel R&D PROMOTIONS, INC.'s U.S. Registration No. 2,037,202.

3. On August 21, 2012, the alleged Registrant R&D PROMOTIONS, INC. filed a Motion to Dismiss.

4. In the Petition to Cancel, Petitioner disputes that alleged Registrant is now, or has ever been, the lawful assignee of U.S. Registration No. 2,037,202 for the mark MISS NUDE INTERNATIONAL and U.S. Registration No. 3,039,826 for the mark MISS NUDE WORLD. Further the alleged Registrant's claim to the marks is based solely upon the fraudulent conveyance of assets conceived to defraud the USPTO with intend to avoid the execution of a valid and enforceable court order, thereby circumventing the proper and lawful ownership of the trademarks by Petitioner.

5. Upon reviewing the alleged Registrant's Motion to Dismiss, Petitioner became aware that the requested relief is in the form of cancellation of Registrant's mark. This was an inadvertent error by Petitioner as Petitioner only seeks to have the ownership of U.S. Registration No. 2,037,202 transferred from Registrant to Petitioner and does not seek to cancel the registration.

6. Petitioner hereby requests that the Petition to Cancel to be amended and the Board rule that the Owner of Record be changed from R&D PROMOTIONS to WILLIAM EADIE based upon the facts alleged in the Amended Petition and the additional matters raised herein.

II. ARGUMENT

7. Pursuant to Fed.R.Civ.P. 15(a), leave to amend shall be freely given when justice so requires. The Board liberally grants leave to amend pleadings at any stage of a proceeding when justice so requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party. TMP § 507.02, See, For example Polaris Industries v. D.C. Comics, 59 USPQ 2d 1789 (TTAB 2001); Boral Ltd. v. FMC Corp., 59 USPQ 2d 1701 (TTAB 2000).

8. Petitioner submits that permitting it to amend its Petition to Cancel will not prejudice the alleged Registrant and that this motion is timely insofar as the issue is a mere scrivener's error.

9. Since the Cancellation Proceeding is still in the pre-trial stage, prior to any testimony having been taken, Leave to Amend should be allowed. See, e.g., Space Base, Inc. v. Stadis Corp., 17 USPQ 2d 1216 (TTAB 1990). By allowing Petitioner to amend his Petition to Cancel, the Board is permitting full adjudication of the merits of the dispute. See, Beth A. Chapman, TIPS FROM THE TTAB: Amending Pleadings: The Right Stuff, 81 Trademark Rep. 306 (1991) ("The fact that the adverse party may be prejudiced as a result of the delay to the proceedings is generally outweighed by the principle that there should be full adjudication.").

10. Furthermore, alleged REGISTRANT fails to establish its requisite burden of ownership necessary for standing under 37 C.F.R. 3.73(b). Additionally, alleged Registrant's Motion To Dismiss is without merit, as no basis exists for alleged REGISTRANT to assert that PETITIONER makes any collateral attack or challenges the validity of the registration for U.S. Registration No. 2,037,202 for the mark MISS NUDE INTERNATIONAL and U.S. Registration No. 3,039,826 for the mark MISS NUDE WORLD. PETITIONER merely requests that relief be granted by correcting the identity of the marks to the lawful owner, PETITIONER.

ALLEGED REGISTRANT DOES NOT HAVE STANDING TO OPPOSE

11. On May 5, 2009, alleged REGISTRANT was created as a State of Florida Limited Liability Company, listing Gracinda Cardoso, also known as Rio Rivers (CARDOSO), as its Managing Member and Attorney Thomas Tracy Aquilla (AQUILLA) as the Attorney of Record. CARDOSO is also listed as President of R&D Promotions, Inc. (R&D) a State of Florida corporation, and AQUILLA as its Attorney of Record.

12. On May 13, 2009, AQUILLA, representing R&D as the Owner of Record for U.S. Registration No. 2,037,202 for the mark MISS NUDE INTERNATIONAL, sent a Cease and Desist letter to the attorney representing Miss G-String International, LLC (APPLICANT) in the matter of Opposition No. 91,200,183 (see APPLICANT'S Initial Disclosures, Exhibit L).

13. On June 6. 2011, in the matter of Opposition No. 91,200,183, alleged REGISTRANT filed its Notice of Opposition against APPLICANT to oppose the registration for the mark MISS G-STRING INTERNATIONAL. The records of the United States Patent and Trademark Office (USPTO) identifies R&D, not alleged REGISTRANT, as the Owner of Record on June 6, 2011.

14. Alleged REGISTRANT failed to establish its ownership of U.S. Registration No. 2,037,202 for the mark MISS NUDE INTERNATIONAL at the time of filling its Notice of Opposition as required by 37 C.F.R. 3.73 (b) which requires the following in establishing right of assignee to take action:

> (a) The inventor is presumed to be the owner of a patent application, and any patent that may issue therefrom, unless there is an assignment. The original applicant is presumed to be the owner of a trademark application or registration, unless there is an assignment.
>
> (b) In order to request or take action in a patent or trademark matter, the assignee must establish its ownership of the patent or trademark property of paragraph (a) of this section to the satisfaction of the Director. The establishment of ownership by the assignee may be combined with the paper that request or takes the action. Ownership is established by submitting to the Office a signed statement identifying the assignee, accompanied by either:
>
> (i) Documentary evidence of a chain of title from the original owner to the assignee is recorded (e.g., copy of an executed assignment). For trademark matters only the documents submitted to establish ownership may be required to be recorded pursuant

to 3.11 in the assignment records of the Office as a condition to permitting the assignee to take action in a matter pending before the Office; or

(ii) A statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (e.g., reel and frame number).

15. On September 22, 2011, the Records of the USPTO identified R&D, not alleged REGISTRANT, as the Owner of Record for U.S. Registration No. 2,037,202 for the mark MISS NUDE INTERNATIONAL.

16. On September 22, 2011, PETITIONER asserted his ownership interest by filing a trademark assignment for U.S. Registration No. 2,037,202 for the mark MISS NUDE INTERNATIONAL as authorized by his valid and enforceable court order.

17. On September 23, 2011, the records of the USPTO identified R&D, not alleged REGISTRANT, as the Owner of Record for U.S. Registration No. 3,039,826 for the mark MISS NUDE WORLD.

18. On September 23, 2011, PETITIONER asserted his ownership interest by filing a trademark assignment for U.S. Registration No. 3,039,826 for the mark "MISS NUDE WORLD" as authorized by his valid and enforceable court order.

19. On September 27, 2011, AQUILLA, while collectively representing R&D, CARDOSO, and alleged REGISTRANT, conspired with malicious intent to defraud the USPTO by conceiving, composing and executing two (2) fraudulent nunc pro tunc Trademark Assignments, first from R&D to CARDOSO, then from CARDOSO to alleged REGISTRANT.

20. The automatic assignments to alleged REGISTRANT on September 27, 2011, were improper because the assignors did not own U.S. Registration No. 2,037,202 for the mark MISS NUDE INTERNATIONAL and U.S. Registration No. 3,039,826 for the mark MISS NUDE WORLD.

21. Furthermore, they were ineffective because the actions constitute a fraudulent conveyance of assets intended to avoid the execution of a valid and enforceable court order, thereby circumventing the proper and lawful possession of the trademarks by PETITIONER through the full faith and credit of a court order.

22. On June 21, 2012, in the matter of Opposition No. 91,200,183, the Board ordered APPLICANT to file its Amended Answers.

23. On July 10, 2012, in the matter of Opposition No. 91,200,183, APPLICANT filed its Amended Answers which includes, FOR AND AS A SIXTH AFFIRMATIVE DEFENSE, the previously noted failure by alleged REGISTRANT to establish its ownership of the mark MISS NUDE INTERNATIONAL as required by 37 C.F.R. 3.73 (b). and "respectfully requests that this opposition proceeding dismissed, with prejudice."

FRAUDULENT CONVEYANCE OF TRADEMARKS TO ALLEGED REGISTRANT

24. AQUILLA and alleged REGISTRANT conspired with malicious intent to defraud the USPTO by conceiving, composing and executing two fraudulent nunc pro tunc Trademark Assignments to avoid execution of a valid and enforceable court order by a third party, PETITIONER.

25. Nunc pro tunc or "now for then" refers to changing to an earlier date the filing of an order, judgment or filing of a document. Such a retroactive re-dating requires a court order which can be obtained by a showing that the earlier date would have been legal, and there was an error, accidental omission or neglect which has caused a problem or inconvenience which can cured and is granted to answer the purposes of justice, but never to do injustice.

26. On October 28, 2011, in the matter of Opposition No. 91,200,183, APPLICANT filed its Motion to Strike nunc pro tunc Trademark Assignments (see APPLICANT'S Motion To Strike nunc pro tunc Trademark Assignments). Described below are the most obvious failures made by AQUILLA on behalf of alleged REGISTRANT, any one of which sufficient to render the nunc pro tunc Trademark Assignments invalid.

27. First, alleged REGISTRANT failed to petition for, obtain and provide the requisite court order mandated to grant permission to file the nunc pro tunc trademark assignments, thereby rendering them invalid. Alleged REGISTRANT intentionally neglected this mandate, as no court would grant such a petition when provided with full disclosure of the facts.

28. Second, alleged REGISTRANT'S nunc pro tunc Trademark Assignments are predicated upon the validity of the Trademark Assignment Documents, which require a notary to attest to or authenticate each signature. The Trademark Assignment Documents failed to (i) identify in writing or typing each signer to be the person whose name is signed to the document, (ii) state in writing or typing that the identity of the signers was made through personal knowledge or through appropriate credentials, such as a driver's license, (iii) state in writing or typing the Certificate of Acknowledgment on the document with the appropriate phrase "The foregoing was sworn to and acknowledged before me by (name of notary)" and (iv) include the printed name of the notary followed by the written or typed "Commission Expiration Date", thereby rendering them invalid.

29. Third, the Trademark Assignment Documents falsely claimed ownership of trademarks not owned by the assignors, thereby rendering them invalid.

30. AQUILLA contradicts his own written affirmations as to which entity, R&D or alleged REGISTRANT, is the lawful owner of the marks, not once, but twice.

31. On September 27, 2011, AQUILLA contradicts himself for the first time, by attesting, in writing, to the validity of alleged REGISTRANT'S first nunc pro tunc Trademark Assignment, by identifying R&D as the assignor and CARDOSO as the assignee, with the alleged effective date of March 30, 2003.

32. On September 27, 2011, AQUILLA attests, in writing, to the validity of alleged REGISTRANT'S second nunc pro tunc Trademark Assignment, by identifying R&D as the assignor and CARDOSO as the assignee, with the alleged effective date of May 6, 2009.

33. On May 13, 2009, exactly one week after alleged REGISTRANT'S second fraudulent nunc pro tunc Trademark Assignment, with the alleged effective date of May 6, 2009, AQUILLA now attests, in writing, in the aforementioned Cease and Desist Letter to the attorney for APPLICANT, that R&D, not alleged REGISTRANT, is indeed the Owner of Record for the mark MISS NUDE INTERNATIONAL. The records of the USPTO identify R&D, not alleged REGISTRANT, as the Owner of Record for the mark MISS NUDE INTERNATIONAL on May 13, 2009.

34. AQUILLA'S OWN LETTER TO ANOTHER OFFICER OF THE COURT dated May 13, 2009, one week after the alleged effective date of the second fraudulent nunc pro tunc Trademark Assignment and the records of the USPTO provide irrefutable and conclusive proof that alleged registrant has no lawful claim to the ownership of the mark MISS NUDE INTERNATIONAL.

35. Next, on October 6, 2011, AQUILLA contradicts himself for the second time by attesting, in writing, as to the validity of R&D, not alleged REGISTRANT, as Owner of Record for the mark MISS NUDE INTERNATIONAL. AQUILLA sent a letter to the New Hampshire Attorney Discipline Office in which he reaffirms, in writing, that R&D, not alleged REGISTRANT, is the Owner of Record for the mark MISS NUDE INTERNATIONAL.

36. AQUILLA states "The statements made in my letter to Mr. Eadie dated May13, 2009, are true and correct..." (see APPLICANT'S MOTION TO STRIKE nunc pro tunc TRADEMARK ASSIGNMENTS Exhibit "O" in the matter of Opposition No. 91,200,183).

37. Notably, AQUILLA'S second letter of October 6, 2011, was written exactly nine (9) days after AQUILLA attested to the validity of and filed the fraudulent nunc pro tunc Trademark Assignments with intent to defraud the USPTO.

38. For the second time, AQUILLA HIMSELF provides irrefutable and conclusive proof that the alleged registrant has no lawful claim to the ownership of the mark MISS NUDE INTERNATIONAL. Both letters written by AQUILLA as Attorney of Record for R&D, dated more than two (2) years apart, identify R&D, not alleged REGISTRANT, as the Owner of Record for mark MISS NUDE INTERNATIONAL.

39. AQUILLA, as Attorney of Record for R&D, CARDOSO and alleged REGISTRANT offers the following fictional account; (i) that he made an error, accidental omission or neglect (ii) not once, but twice (iii) for two totally separate trademark assignments, (iv) each with the same principal, CARDOSO, (v) with alleged effective dates greater than six (6) year apart (vi) which conveniently include, and were filed mere days after PETITIONER received from the USPTO both Notice of Recordation of Trademark Assignments for each of the aforementioned marks, and (vii) never during this six year period of time did a single incident of any nature

occurred related to any of R&D's thirteen (13) trademarks that would have alerted AQUILLA to the fact that R&D was incorrectly identified as the Owner of Record, (viii) including AQUILLA'S OWN RENEWAL of the mark MISS NUDE INTERNATIONAL on behalf of R&D in 2007.

40. In the matter of Opposition No. 91,200,183, the Board's order of June 21, 2012, states the following reference to the Applicant's Motion to Strike nunc pro tunc Trademark Assignments, dated October 27, 2011:

> "Applicant's motion to strike is granted to the limited extent that copies of opposer's assignment documents that opposer filed with the Board on September 27, 2011, will receive no consideration."

41. AQUILLA correctly identifies on behalf of alleged REGISTRANT in its Motion to Dismiss that "to constitute fraud on the United States Patent and Trademark Office (USPTO), a statement must be (1) false, (2) knowingly made, and (3) a material representation. Moreover, the charge of fraud upon the USPTO must be established by clear and convincing evidence." PETITIONER has proffered incontestable evidence to satisfy this burden of proof.

ALLEGED REGISTRANT'S MOTION TO DISMISS IS WITHOUT MERIT

42. On June 21, 2012, in the matter of Opposition No. 91,200,183, the Board ordered that "Eadie (PETITIONER) must assert his ownership of Registration No. 2,037,202 by filing a petition under Trademark Act Section 18, 15 U.S.C. Section 1068, along with the appropriate filing fee, wherein he seeks to correct that registration to identify himself as the owner thereof."

43. PETITIONER filed his Petition for Cancellation to assert his ownership for U.S. Registration No. 2,037,202 for the mark MISS NUDE INTERNATIONAL and for U.S. Registration No. 3,039,826 for the mark MISS NUDE WORLD including the appropriate fees, on July 10, 2012, as reflected in Cancellation No. 92,055,838.

44. Alleged REGISTRANT'S Motion to Dismiss "is based upon the fact that Registrant's Reg. Nos. 2,037,202 and 3,039,826 are registered and incontestable, the fact that Petitioner fails to recite one of the grounds specified in Trademark Act 14(3) OR 14(5), 15 U.S.C. 1064(3) OR 15 U.S.C. 1064(5) on which relief may be granted, and the fact that Petition's allegation in support of damage lack a reasonable basis in fact."

45. As PETITIONER has documented that alleged REGISTRANT has no standing in this action, no basis exists for alleged REGISTRANT to assert that PETITIONER makes any collateral attack nor challenges the validity of the registration for U.S. Registration No. 2,037,202 for the mark MISS NUDE INTERNATIONAL and U.S. Registration No. 3,039,826 for the mark MISS NUDE WORLD, merely requests that relief be granted by correcting the identity to the lawful owner.

46. Alleged REGISTRANT further states that PETITIONER is required to a "showing that it has a "real interest" in the case, that is a legitimate personal interest in the outcome of the

proceedings and a reasonable basis for its belief in damage." PETITIONER is the Judgment Debtor of a valid and enforceable court order.

RELIEF REQUESTED

47. Petitioner, WILLIAM EADIE, attaches hereto as Exhibit 1 a copy of the proposed Amended Petition to Cancel pursuant to TBMP § 507.01.

48. WHEREFORE, Petitioner WILLIAM EADIE, respectfully requests that the Board deny the alleged Registrant's Motion to Dismiss as moot and Petitioner be granted leave to file the Amended Petition to Cancel.

Respectfully Submitted,

Miss G-String International

By: _____ Dated: 9.4.12

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing AMENDED PETITION TO CANCEL, has been served on Gracinda Cardoso, Registered Agent for R&D Promotions, Inc., 1473 Heather Way, Kissimmee, Florida, 34744, and Thomas T. Aquilla, Esquire, Domestic Representative for R&D Promotions, Inc., 221 Coe Hill Road, Center Harbor, New Hampshire, 03226, by mailing said copy on September 4, 2012, via First Class Mail, postage prepaid.

Attorney for Applicant/Petitioner
Signed September 4 , 2012

Designation of Domestic Representative

Attorney Luke Lirot, Esq., whose postal address is 2240 Belleair Rd., Suite 190, Clearwater, FL 33764, is hereby, designated WILLIAM EADIE'S representative upon whom notice or process in this proceeding may be served.

Attorney for Applicant/Petitioner
Signed September 4, 2012