

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

Baxley

Mailed: November 27, 2013

**Opposition No. 91200183**

The Worlds Pageants LLC and Camila  
Productions Ltd. (joined as party  
plaintiff)

v.

Miss G-String International LLC

**Cancellation No. 92055838**

William Eadie

v.

The Worlds Pageants, LLC and  
Camila Productions Ltd. (joined as  
party defendant)

(as consolidated)

Before Bucher, Lykos, and Gorowitz,  
Administrative Trademark Judges.

By the Board:

In the above-captioned opposition proceeding, The Worlds Pageants LLC (“Worlds”) filed a notice of opposition to registration by Miss G-String International LLC’s (“G-String”) of the composite service mark shown at right, for “entertainment services in the nature of conducting beauty pageants and talent contests”



in International Class 41<sup>1</sup> on the ground of likelihood of confusion under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), based on its previously used and registered mark MISS NUDE INTERNATIONAL in typed form for “entertainment services in the nature of promoting and conducting beauty pageants” in International Class 41.<sup>2</sup>

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<sup>1</sup> Application Serial No. 77753000, filed June 5, 2009, alleging April 29, 2009 as the date of first use anywhere and in commerce. The application includes a disclaimer of the wording G-STRING INTERNATIONAL. The application includes the following description of the mark: “The mark consists of the stylized wording ‘MISS G-STRING INTERNATIONAL’ with the wording ‘G-STRING’ in yellow gold. The word ‘MISS’ in white is above the word ‘G-STRING’ and the word ‘INTERNATIONAL’ in white is below ‘G-STRING.’ All of the wording is outlined in black. All of the words are superimposed on a woman’s pink undergarment.” The application also includes a statement that the colors white, yellow gold, pink and black are claimed as a feature of the mark.

<sup>2</sup> Such mark is subject of Registration No. 2037202, which was issued on February 11, 1997, and has been renewed. The registration includes a disclaimer of NUDE INTERNATIONAL.

United States Patent and Trademark Office (“USPTO”) records indicate that Registration No. 2037202 was issued to Huggy Bear Productions, Inc. (“Huggy Bear”).

A document dated February 10, 2003, and reflecting the assignment of such registration from Huggy Bear to Brava Enterprises, Inc. (“Brava”), effective as of March 6, 2000, was recorded on January 7, 2004, with the United States Patent and Trademark Office’s Assignment Branch at Reel 2774/Frame 0589.

A document dated October 11, 2000, and reflecting the assignment of Registration No. 2037202 from Brava to Gracinda Cardoso (“Cardoso”) was recorded on November 13, 2002, with the Assignment Branch at Reel 2619/Frame 0495.

A document dated May 17, 2001, and reflecting the assignment of such registration from Cardoso to R&D Promotions, Inc. (“R&D”) was recorded on February 22, 2002, with the Assignment Branch at Reel 2457/Frame 0887. Thus, when the opposition proceeding was commenced on June 6, 2011, USPTO records identified R&D as the record owner of the Registration No. 2037202.

Following the commencement of the opposition proceeding, a document dated September 27, 2011, and reflecting the assignment of such registration from R&D to Cardoso, effective March 31, 2003, was recorded on September 27, 2011, with the Assignment Branch at Reel 4631/Frame 0418.

A document dated September 27, 2011, and reflecting the assignment of Registration No. 2037202 from Cardoso to Worlds, effective May 6, 2009, was recorded on September 27, 2011, with the Assignment Branch at Reel 4631/Frame 0436.

On July 10, 2012, G-String filed an amended answer in the opposition proceeding, and William Eadie (“Eadie”), who is alleged to be G-String’s managing member, filed a petition under Trademark Act Section 18, 15 U.S.C. Section 1068, to amend Registration Nos. 2037202 and 3039826<sup>3</sup> to identify Eadie as the proper owner thereof, which was instituted on July 12, 2012, as the above-captioned cancellation proceeding.

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A document dated September 19, 2012, and reflecting the assignment of such registration from Worlds to Camila Productions Ltd. (“Camila”) was recorded on December 13, 2012, with the Assignment Branch at Reel 4918/Frame 0559.

In addition, on September 22, 2011, William Eadie (“Eadie”), who is identified in a motion for summary judgment that G-String filed on June 14, 2013, as G-String’s managing member, recorded with the Assignment Branch at Reel 4627/Frame 0508 copies of (1) a default judgment order for monetary damages that was entered on April 1, 2005, by Circuit Court for the Sixth Judicial Circuit in and for Pinellas County, Florida in a proceeding styled *Bell v. R&D Promotions, Inc. and Cardoso*, Case No. 04-7512-CI-11, and (2) an August 22, 2011, document reflecting the assignment of that judgment from Bell to Eadie.

<sup>3</sup> Such registration, for the mark MISS NUDE WORLD in typed form for “[e]ntertainment services in the nature of promoting and conducting beauty pageants” in International Class 41, was issued to R&D on January 10, 2006, and alleges June 1964 as the date of first use anywhere and June 1987 as the date of first use in commerce. Section 8 affidavit accepted, Section 15 affidavit acknowledged.

A document dated September 27, 2011, and reflecting the assignment of such registration from R&D to Cardoso, effective March 31, 2003, was recorded on September 27, 2011, with the Assignment Branch at Reel 4631/Frame 0418.

A document dated September 27, 2011, and reflecting the assignment of Registration No. 2037202 from Cardoso to Worlds, effective May 6, 2009, was recorded on September 27, 2011, with the Assignment Branch at Reel 4631/Frame 0436.

A document dated September 19, 2012, and reflecting the assignment of such registration from Worlds to Camila was recorded on December 13, 2012, with the Assignment Branch at Reel 4918/Frame 0559.

In addition, on September 23, 2011, Eadie recorded with the Assignment Branch at Reel 4629/Frame 0425 copies of (1) a default judgment order that was entered on April 1, 2005 by Circuit Court for the Sixth Judicial Circuit in and for Pinellas County, Florida in a proceeding styled *Bell v. R&D Promotions, Inc. and Cardoso*, Case No. 04-7512-CI-11, and (2) an August 22, 2011 document reflecting the assignment of that judgment from Bell to Eadie.

In lieu of an answer in the cancellation proceeding, Worlds, on August 21, 2012, filed a motion to dismiss Eadie's petition to cancel under Fed. R. Civ. P. 12(b)(6) for failure to state a claim.<sup>4</sup> The Board, in a June 29, 2013 order, granted the motion to dismiss, based on a review of the first amended petition to cancel,<sup>5</sup> on the basis that the Board lacks authority to grant the relief requested in the first amended petition to cancel. In keeping with Board practice, the Board, in that order, also allowed Eadie until July 19,

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<sup>4</sup> Following the issuance of the August 24, 2012 suspension order, Eadie filed: (1) on September 4, 2012, an amended petition to cancel and a second amended petition to cancel; (2) on January 15, 2013, a motion to strike assignment documents that Worlds recorded with the USPTO's Assignment Branch on December 13, 2012; and (3) on June 14, 2013, a motion for summary judgment and a withdrawal of the motion to strike and the second amended petition to cancel. In the Board's June 29, 2013 order, the Board declined to consider the motion to strike and the motion for summary judgment in the opposition.

<sup>5</sup> The Board determined in the June 29, 2013 order that Eadie adequately pleaded his standing in paragraphs 10-13 of the amended petition by alleging that: (1) on September 22, 2011, USPTO records indicated that R&D was the record owner of Registration No. 2037202; (2) on September 22, 2011, Eadie asserted ownership interest in that registration by filing an assignment document for that registration; (3) on September 23, 2011, USPTO records indicated that R&D was the record owner of Registration No. 3039826; and (4) on September 23, 2011, Eadie asserted ownership interest in that registration by filing an assignment document for that registration. June 29, 2013 order at 7. *See also id.* at 10. The Board further determined that Eadie sufficiently alleged that Worlds and its predecessors-in-interest, R&D and Cardoso, committed fraud in the amended petition to cancel by "falsely claim[ing] ownership of trademarks not owned by the assignors" and preparing, executing, and filing with the USPTO on September 27, 2011, two fraudulent assignment documents of Registration Nos. 2037202 and 3039826, one from R&D to Cardoso and the other from Cardoso to Worlds, "with malicious intent to defraud the USPTO." *Id.* at 10-11.

However, the Board noted that a finding a fraud could not result in title in the registration being transferred to Eadie, as Eadie has requested in his prayer for relief, and that a finding of fraud would result in the cancellation of registrations at issue in the international class or classes in which fraud has been committed. *Id.* at 13.

The Board further noted that a trademark registration is not "a chattel which can be transferred in gross apart from the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark." *Id.* at 12-13.

2013, to file a third amended petition to cancel.<sup>6</sup> In that order, the Board explained that Eadie is improperly asking in the prayer for relief of the first amended petition to cancel that the Board assign him Registration Nos. 2037202 and 3039826 as a means of enforcing a judgment for monetary damages that was entered in a another proceeding styled *Bell v. R&D Promotions, Inc. and Cardoso*, Case No. 04-7512-CI-11, which was filed in the Circuit Court for the Sixth Judicial Circuit in Pinellas County, Florida, and which was assigned to Eadie. The Board pointed out that it lacks jurisdiction to enforce a judgment for monetary damages. *See* June 29, 2013 order at 11-12.

After Eadie filed a third petition to cancel on July 18, 2013, Worlds and Camila, on August 8, 2013, filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. Eadie has filed a brief in response thereto.

A motion to dismiss for failure to set forth a claim is solely a test of the legal sufficiency of the complaint. *See Advanced Cardiovascular Systems Inc. v. SciMed Life Systems Inc.*, 988 F.2d 1157, 26 USPQ2d 1038, 1041 (Fed. Cir. 1993). *See also* TBMP Section 503.02 and cases cited therein (3d ed. rev. 2013). To set forth a legally sufficient complaint, Eadie need only allege sufficient factual matter as would, if proved, establish that (1) he has standing to maintain the proceeding, and (2) a valid ground exists for the

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<sup>6</sup> As noted *supra*, Eadie filed a second amended petition to cancel on September 4, 2012, but withdrew that filing on June 14, 2013.

relief requested. *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 187 (CCPA 1982). Specifically, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). In the context of *inter partes* proceedings before the Board, a claim has facial plausibility when the plaintiff pleads factual content that allows the Board to draw a reasonable inference that plaintiff has standing and that a valid ground for the opposition or cancellation exists. *Cf. Twombly*, 550 U.S. at 556. In particular, a plaintiff need only allege “enough factual matter ... to suggest that [a claim is plausible]” and “raise a right to relief above the speculative level.” *Totes-Isotoner Corp. v. U.S.*, 594 F.3d 1346, 1354 (Fed. Cir. 2010).

As an initial matter, we note that Eadie’s third amended petition to cancel is set forth in separately captioned, numbered sections, but is not set forth “in numbered paragraphs, each limited as far as practicable to a single set of circumstances,” as required by Fed. R. Civ. P. 10(b).

Regarding Eadie’s standing, any person who believes he is or will be damaged by registration of a mark has standing to file a complaint. *See* Trademark Rule 2.111(b). At the pleading stage, all that is required is that a plaintiff allege facts sufficient to show a real interest in the proceeding, and a reasonable basis for his belief that he would suffer some kind of damage if the mark is registered. *See Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023,

1025 (Fed. Cir. 1999). *See also* TBMP Section 309.03(b) and cases cited therein.

The cancellation proceeding is equivalent to a counterclaim in the opposition proceeding. Even if Eadie is G-String's managing member, as he alleges in a declaration in support of G-String's motion for summary judgment, he and G-String are separate legal entities. Therefore, Eadie must allege facts sufficient to show *his* real interest in the proceeding, and a reasonable basis for *his* belief that he would suffer some kind of damage. *See Stuart Spector Designs Ltd. v. Fender Musical Instruments Corp.*, 94 USPQ2d 1549, 1553-54 (TTAB 2009) (each plaintiff must plead and demonstrate its standing). Eadie adequately pleaded his standing in Section 1 of the third amended petition by alleging, among other things, that: (1) on January 22, 2004, Cardoso and R&D entered into a contract with Brian Bell ("Bell"), whereby Cardoso and R&D borrowed twenty thousand dollars from Bell, with the loan being secured by R&D's assets and Cardoso's personal guarantee; (2) after Cardoso and R&D defaulted on that contract, Bell, on April 1, 2005, secured a judgment in his favor, entitling him to execute upon the stock and assets of R&D and the assets of Cardoso; (3) Eadie obtained an assignment of the judgment from Bell, thus giving Eadie the right to execute upon the stock and assets of R&D and the assets of Cardoso; (4) in accordance with Florida law, Eadie, on September 1, 2011, filed a judgment lien with the Florida Secretary of State and obtained a judgment lien certificate perfecting that

lien; and (5) as the owner of said judgment, Eadie may execute that judgment on the stocks and assets of R&D and the assets of Cardoso.

However, Eadie has failed to set forth a valid ground for the requested relief. In the third amended petition, Eadie is asking that the Board find that he is the owner of the involved registrations, by operation of the aforementioned judgment.<sup>7</sup> Eadie further asserts that the registrations at issue are subject to execution under Florida law.<sup>8</sup> However, the Board has no jurisdiction to adjudicate issues arising under Florida law. *Cf. Enterprise Rent-A-Car Co. v. Advantage Rent-A-Car Inc.*, 300 F.3d 1333, 66 USPQ2d 1811, 1819-20 (Fed. Cir. 2003) (no jurisdiction to decide issues arising under state dilution laws), *aff'g* 62 USPQ2d 1857, 1858 (TTAB 2002).

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<sup>7</sup> Worlds and Camila contend that dismissal is warranted because Eadie has not recited one of the grounds specified in Trademark Act Sections 14(3) and 14(5), 15 U.S.C. Sections 1064(3) and 1064(5). However, Section 14(3) is inapplicable because claims under Trademark Act Section 18 are available against registrations that are more than five years old. *Cf. Eurostar Inc. v. "Euro-Star" Reitmoden GmbH & Co. KG*, 34 USPQ2d 1266, 1271 n.3 (TTAB 1994) (Section 18 claims for restriction of identification of goods and services available against registrations more than five years old). Further, Trademark Act Section 14(5), 15 U.S.C. Section 1064(5), involves certification marks and is irrelevant to this case.

<sup>8</sup> Eadie further asserts that Worlds and Camila "do[] not have standing to oppose" Eadie's third amended petition. However, a defendant to a petition to cancel is not required to prove standing to defend against that petition. Moreover, although the Board, in the June 21, 2012 order, struck as premature assignment documents that Worlds filed in the Board file for this proceeding, Worlds and Camila, as noted *supra*, have recorded with the USPTO's Assignment Branch "[d]ocumentary evidence of a chain of title from the original owner to" them in accordance with Patent and Trademark Rule 3.73(b) and are therefore proper defendants in the cancellation proceeding. As the Board stated in that order, "any determination as to whether or not such documents are fraudulent[, as G-String alleges,] is a matter for resolution based on the evidence of record at trial." June 21, 2012 order at 6.

As noted in the June 21, 2012 and June 29, 2013 orders, the judgment that Eadie purchased from Bell calls for monetary damages only, from R&D and Cardoso; that judgment does not expressly transfer any intellectual property rights. Eadie is essentially asking the Board to execute that judgment by declaring him the owner of Registration Nos. 2037202 and 3039826. Although the Board can, in certain limited circumstances, amend a registration to identify the true owner of that registration,<sup>9</sup> the Board cannot grant the relief that Eadie requests under the circumstances herein. Even if we assume that the assignment documents that were recorded during the pendency of this proceeding are invalid and that, as Eadie argues, Trademark Act Section 18, 15 U.S.C. Section 1068, enables the Board to “restrict or rectify with respect to the register the registration of a registered mark,” the Board lacks jurisdiction to award monetary damages and by extension lacks jurisdiction to enforce a judgment for monetary damages. *See generally Luehrmann v. Kwik Kopy Corp.*, 2 USPQ2d 1303 (TTAB 1987) (Board has no authority to award fees, costs or monetary damages). Eadie has cited to no case, nor is the Board aware of any such case, in which the

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<sup>9</sup> *See, e.g., 8440 LLC v. Midnight Oil Company*, 59 USPQ2d 1541, 1541 (TTAB 2001) (where the record showed that plaintiff, rather than defendant, was the true owner of the marks in the challenged application and registration and where the parties filed a joint motion that registration be issued in the name of plaintiff and that the register be rectified to show plaintiff as the owner of the existing registration, Board exercised authority under Trademark Act Section 18, and granted motion); *Chapman v. Mill Valley Cotton*, 17 USPQ2d 1414, 1415-16 (TTAB 1990) (“*Chapman*”) (in view of document in which rights of applicant, a joint venture, were assigned to opposer, a party to the joint venture, the Board ordered that the application be amended to show the opposer as the applicant and that the registration issue in her name).

Board permitted a party to execute a judgment issued by a court for monetary damages by way of a Board judgment declaring that party the owner of a registration under Trademark Act Section 18.<sup>10</sup> In enforcing a judgment for monetary damages, the Board would be required to render a determination of the monetary value of the registrations at issue, which is beyond the Board's purview. *Cf. General Mills Inc. v. Fage Dairy Processing Industry SA*, 100 USPQ2d 1584, 1591 (TTAB 2011) (Board has no authority to determine the right to use, or the broader questions of infringement, unfair competition, damages or injunctive relief). See also Trademark Rule 2.127(f) ("The Board will not hold any person in contempt, or award attorneys' fees or other expenses to any party.").

In addition, we note that Eadie is seeking a transfer of the registrations only and not of any portion of Camila's business connected with the use of and symbolized by the registered marks. As noted in the June 29, 2013 order, a trademark registration is not "a chattel which can be transferred in gross apart from the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark." June 29, 2013 order at 12-13.

Rather, any effort to execute the judgment at issue must be raised in another forum. Because the Board lacks authority to grant the relief sought

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<sup>10</sup> As the Board noted in the June 29, 2013 order, the circumstances herein differ from those in *Chapman*, to which the Board referred in the June 21, 2012 order. *Chapman* involved an ownership dispute between related parties, whereas the above-cancellation proceeding involves a dispute between unrelated parties.

by way of the third amended petition to cancel, the motion to dismiss under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted is hereby granted.

The Board's general practice is to allow a plaintiff whose complaint has been found insufficient an opportunity to file an amended complaint which corrects the noted deficiencies. However, because Eadie's third amended petition merely repeats deficiencies already noted in detail in the June 29, 2013 order, and the asserted claim is futile, the Board finds that justice does not require that such leave be given in this case. *See McDonnell Douglas Corp. v. National Data Corp.*, 228 USPQ 45, 48 (TTAB 1985). *See also* TBMP Section 503.03 and cases cited therein. The cancellation proceeding is therefore dismissed with prejudice.

The above-captioned opposition proceeding is resumed. Dates in that proceeding are reset as follows.

Expert Disclosures Due	<b>2/13/2014</b>
Discovery Closes	<b>3/15/2014</b>
Plaintiff's Pretrial Disclosures Due	<b>4/29/2014</b>
Plaintiff's 30-day Trial Period Ends	<b>6/13/2014</b>
Defendant's Pretrial Disclosures Due	<b>6/28/2014</b>
Defendant's 30-day Trial Period Ends	<b>8/12/2014</b>
Plaintiff's Rebuttal Disclosures Due	<b>8/27/2014</b>
Plaintiff's 15-day Rebuttal Period Ends	<b>9/26/2014</b>

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.

If either of the parties or their attorneys should have a change of address, the Board should be so informed promptly.