UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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General Contact Number: 571-272-8500

Baxley

Mailed: October 15, 2014

Opposition No. 91200183

The Worlds Pageants, LLC and Camila Productions Ltd.

v.

Miss G-String International LLC

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

By the Board:

The Worlds Pageants LLC ("Worlds") filed a notice of opposition to registration by Miss G-String International LLC's ("Applicant") 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[1] on the ground of likelihood of confusion under Trademark Act Section 2(d), 15 U.S.C.

[1] 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

§ 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.

When the notice of opposition was filed on June 6, 2011, USPTO Assignment Branch records identified R&D Promotions, Inc. ("R&D") as the record owner of the pleaded registration.[2] Following the commencement of this proceeding, Opposer, on September 27, 2011, executed and recorded with the USPTO's Assignment Branch the following documents in connection with the pleaded registration: (1) an assignment from R&D to Gracinda Cardoso ("Cardoso"), *nunc pro tunc* to March 31, 2003;[3] and (2) an assignment from Cardoso to Worlds, *nunc pro tunc* to May 6, 2009.[4] In addition, after a document dated September 19, 2012, reflecting the assignment of the pleaded

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statement that the colors white, yellow gold, pink and black are claimed as a feature of the mark.

[2] 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 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 Ms. Cardoso to R&D was recorded on February 22, 2002, with the Assignment Branch at Reel 2457/Frame 0887.

[3] Such document is recorded at Reel 4631/Frame 0418.

[4] Such document is recorded at Reel 4631/Frame 0436.

registration from Worlds to Camila Productions Ltd. ("Camila") was recorded with the Assignment Branch on December 13, 2012,[5] Camila was joined as a party plaintiff in a June 29, 2013 Board order.[6]

Previously, on September 22, 2011, William Eadie ("Eadie"), who is identified in a motion for summary judgment that Applicant filed on June 14, 2013, as Applicant'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. On July 10, 2012, Applicant filed an amended answer in the above-captioned proceeding, and Eadie filed a petition under Trademark Act Section 18, 15 U.S.C. § 1068, to amend Worlds' Registration Nos. 2037202 and 3039826[7] to identify Eadie as the record owner of those registrations in view of the assignment to him of the default judgment for

[5] Such document is recorded at Reel 4918/Frame 0559.

[6] Henceforth, Worlds and Camila are referred to collectively as "Opposers."

[7] 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. Opposers do not rely upon this registration in this proceeding in support of the pleaded Section 2(d) claim.

monetary damages in Case No. 04-7512-CI-11. That petition resulted in the institution, on July 12, 2012, of Cancellation No. 92055838.[8]

The cancellation proceeding was consolidated with the above-captioned proceeding in an August 24, 2012 order. The Board, in June 29, 2013 and November 27, 2013 orders, granted Worlds' motions to dismiss under Fed. R. Civ. P. 12(b)(6) for failure to state a claim and, in the November 27, 2013 order, dismissed Cancellation No. 92055838 with prejudice.

This case now comes up for consideration of: (1) Applicant's motion (filed May 19 and 20, 2014) for summary judgment on the grounds that Opposers lack standing to maintain this proceeding and that there is no likelihood of confusion between the marks at issue; (2) Opposers' motion (filed June 25, 2014) for summary judgment on its pleaded claim under Trademark Act Section 2(d), 15 U.S.C. § 1052(d); and (3) Applicant's motion (filed June 25, 2014) for default judgment under Fed. R. Civ. P. 55 in view of Opposers' failure to timely oppose Applicant's motion for summary judgment.

As an initial matter, Applicant may file one brief in support of its motion for summary judgment. *See* Trademark Rule 2.127(a). Accordingly, we have treated the filing of the brief in support of Applicant's motion for summary judgment on May 20, 2014, as effectively withdrawing the brief in support of the motion for summary judgment that Applicant filed on May 19, 2014. The

[8] Cancellation No. 92055838 was styled *Eadie v. The Worlds Pageants, LLC and Camila Productions Ltd.*

brief in support of the motion for summary judgment that Applicant filed on May 19, 2014 will therefore receive no consideration.

Applicant's motion for default judgment under Fed. R. Civ. P. 55 for failure to respond to its motion for summary judgment is improper. In a Board proceeding, a motion for default judgment under Rule 55 is appropriate when a defendant fails to file an answer to the complaint in a proceeding but it is inapplicable to a nonmovant's apparent failure to file a brief in response to a motion for summary judgment.[9] *See* Trademark Rules 2.106(a) and 2.114(a); TBMP § 312. "When a party fails to file a brief in response to a motion, the Board may treat the motion as conceded." Trademark Rule 2.127(a). Accordingly, Applicant's motion for default judgment is denied.[10]

Because Applicant served its motion for summary judgment by mail on May 20, 2014, Opposers' brief in response thereto was due by June 24, 2014. *See* Trademark Rules 2.119(c) and 2.127(e)(1). To the extent that the combined brief in support of Opposers' cross-motion for summary judgment and in response to Applicant's motion for summary judgment that Opposers

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[9] Moreover, Applicant's reliance upon Fed. R. Civ. P. 6(d) and 12(a)(1)(A)(i) is inappropriate in this proceeding because the Board has made its own rules governing time to file answers and briefing in connection with motions. *See* Trademark Rules 2.105, 2.113, 2.116(a), 2.119(c), and 2.127(a) and (e)(1).

[10] To the extent that the motion for default judgment is intended as a motion to grant Applicant's motion for summary judgment as conceded, it is inappropriate to file a new motion to grant a previously filed motion as conceded. *See* Trademark Rule 2.127(a) (a movant may file only a brief and a reply brief in support of a motion). Such new motions lead to additional, impermissible briefing of already briefed motions and cause needless delay of proceedings.

filed on June 25, 2014, is intended as a brief in response to Applicant's motion, that response is untimely. Opposers, in their June 25, 2014, submission, include no showing that their failure to respond in a timely manner to Applicant's motion was caused by excusable neglect. *See Pioneer Investment Services Co. v. Brunswick Associates L.P.*, 507 U.S. 380 (1993); *Pumpkin, Ltd. v. The Seed Corps*, 43 USPQ2d 1582 (TTAB 1997); Fed. R. Civ. P. 6(b)(1)(B); TBMP § 509.01(b) (2014). Therefore, we have considered Opposers' combined submission only as a cross-motion for summary judgment. Nonetheless, because Opposers' combined submission clearly indicates that Opposers do not concede Applicant's motion for summary judgment, we have exercised our discretion to consider that motion on the merits and decline to grant it as conceded. *See* Trademark Rule 2.127(a). *See also* TBMP § 502.04 and authorities cited therein.

Summary judgment is an appropriate method of disposing of cases in which there are no genuine disputes as to any material fact, thus leaving the case to be resolved as a matter of law. *See* Fed. R. Civ. P. 56(c). The party moving for summary judgment has the initial burden of demonstrating that there is no genuine dispute regarding any material fact remaining for trial and that it is entitled to judgment as a matter of law. *See Celotex Corp. v. Catrett*, 477 U.S. 317 (1987); *Sweats Fashions Inc. v. Pannill Knitting Co. Inc.*, 833 F.2d 1560, 4 USPQ2d 1793 (Fed. Cir. 1987). The nonmoving party must be given the benefit of all reasonable doubt as to whether genuine

disputes of material fact exist, and the evidentiary record on summary judgment, and all inferences to be drawn from the undisputed facts, must be viewed in the light most favorable to the nonmoving party. *See Opryland USA, Inc. v. Great American Music Show, Inc.*, 970 F. 2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992). The Board may not resolve disputes of material fact; it may only ascertain whether such disputes are present. *See Lloyd's Food Products Inc. v. Eli's Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993); *Opryland USA,* 23 USPQ2d at 1476; *Olde Tyme Foods Inc. v. Roundy's Inc.*, 961 F.2d 200, 22 USPQ2d 1542 (Fed. Cir. 1992).

As an initial matter, Opposers incorrectly asserted in their cross-motion that the Board determined in the November 27, 2013 order that Opposers had established standing to maintain this proceeding and that priority was not an issue in this case. In this proceeding, we have repeatedly stated that any determination as to whether or not the assignment documents upon which Worlds and Camila rely to establish ownership rights in the pleaded mark and registration are fraudulent is a matter for resolution at trial based on the evidence of record. *See* June 21, 2012 order at 6; June 29, 2013 order at 3 n.3; November 27, 2013 order at 8 n.8.

The Board stated in the November 27, 2013 order that, because Worlds and Camila 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), they were proper defendants in

Cancellation No. 92055838. November 27, 2013 order at 8 n.8. The parties should not infer any finding of Opposers' standing based on that statement.

In this case, the Board has not had occasion to make any determination that Opposers have established standing and that priority is not an issue. Opposers did not submit as an exhibit to the notice of opposition either a copy of the pleaded registration prepared and issued by the United States Patent and Trademark Office showing both the current status of and current title to the registration or a current printout of information from the electronic database records of the USPTO showing the current status and title of the registration.[11] *See* Trademark Rule 2.122(d)(1). As noted *supra*, USPTO records at the time the notice of opposition was filed identified R&D as the record owner of the pleaded registration. Thus, Worlds could not have submitted a status and title copy of that registration which supported Worlds' allegation that it is the assignee of the pleaded registration as an exhibit to the notice of opposition. Worlds did not submit documents purporting to show chain of title from the original registrant Honey Bear to Worlds until more than three months after the commencement of this proceeding, at which time

[11] As noted *supra*, USPTO records at the time the notice of opposition was filed identified R&D as the record owner of the pleaded registration. Thus, Worlds could not have submitted a status and title copy of that registration which supported Worlds's allegation that it is the assignee of the pleaded registration as an exhibit to the notice of opposition. Worlds did not submit documents purporting to show chain of title from the original registrant Honey Bear to Worlds until more than three months after the commencement of this proceeding. Accordingly, to rely at trial upon the pleaded registration, Opposers must make that registration properly of record at trial either through a notice of reliance or witness testimony. *See* Trademark Act Section 2(d), 15 U.S.C. § 1052(d); *Industrial Adhesive Co. v. Borden, Inc.,* 218 USPQ 945, 947-48 (TTAB 1983); Trademark Rule 2.122(d)(2).

it filed two *nunc pro tunc* assignments. Accordingly, to rely at trial upon the pleaded registration, Opposers must make that registration properly of record at trial either through a notice of reliance or witness testimony. *See* Trademark Act Section 2(d), 15 U.S.C. § 1052(d); *Industrial Adhesive Co. v. Borden, Inc.,* 218 USPQ 945, 947-48 (TTAB 1983); Trademark Rule 2.122(d)(2).

Regarding Applicant's motion for summary judgment on the ground that Opposers lack standing to maintain this proceeding because Opposer Worlds did not own the pleaded MISS NUDE INTERNATIONAL mark when it filed the notice of opposition, we find that Applicant has failed to meet its burden of establishing that there is no genuine dispute that Opposers lack standing to maintain this proceeding.[12] Contrary to Applicant's assertion, Worlds was not required to file documentation with the USPTO Assignment Branch indicating its ownership of the pleaded mark and pleaded Registration No. 2037202 prior to the time that it filed the notice of opposition. Proof of

[12] Applicant argues at length that, because the aforementioned *nunc pro tunc* assignments are invalid, Opposers cannot assert ownership of other marks named in those documents, namely, the MISS NUDE UNIVERSE, MISS NUDE SOUTHERN USA, MISS EXOTIC DANCER USA, MISS NUDE USA, MISS EROTIC, MISS EXOTIC, AMERICAN CENTERFOLD SEARCH, NORTH AMERICAN CENTERFOLD SEARCH, MISS EXOTIC GULF COAST, MISS NUDE WORLD, and MISS NUDE WORLD INTERNATIONAL marks. However, Opposers do not rely on those marks in support their Section 2(d) claim, and the alleged invalidity of any assignments of these marks is not at issue in this case. *See* TBMP §§ 314 and 528.07(a). Accordingly, Applicant's arguments will receive no consideration.

standing asserted in a notice of opposition is a matter for resolution on the merits at trial.[13] *See Flatley v. Trump,* 11 USPQ2d 1284 (TTAB 1989).

Further, Applicant notes that, in a May 13, 2009 cease and desist letter to Applicant's attorney, Opposers' attorney stated that, as of May 13, 2009, R&D (not Worlds) was the owner of the registered MISS NUDE INTERNATIONAL mark and affirmed that such statement was "true and correct" in an October 6, 2011 letter to the Attorney Discipline Office of the New Hampshire Bar Association. Although these statements contradict the document dated and recorded with the Assignment Branch on September 27, 2011 which memorialized the assignment of Registration No. 2037202 from Cardoso to Worlds *nunc pro tunc* to May 6, 2009, the statements do not establish that there is no genuine dispute that such assignment was invalid. Rather, those statements clearly indicate that there is a genuine dispute regarding the validity of the assignment documents upon which Opposers rely to claim ownership of the pleaded registration. Based on the foregoing, Applicant's motion for summary judgment on the ground that Opposers lack standing to maintain this proceeding is denied.

Regarding Applicant's motion for summary judgment on Opposers' Section 2(d) claim on the ground that there is no genuine dispute that there is no

[13] Parties in Board proceedings can and do rely on *nunc pro tunc* assignment documents to establish title in applications and registrations that relates back to an earlier date. *See, e.g., Threshold.TV Inc. v. Metronome Enterprises Inc.*, 96 USPQ2d 1031, 1033 n.1 (TTAB 2010); *Interstate Brands Corp. v. McKee Foods Corp.*, 53 USPQ2d 1910, 1911 n.1 (TTAB 2000).

likelihood of confusion between the marks, Applicant failed to meet its initial burden of establishing that there is no genuine dispute on this issue and that it is entitled to entry of judgment as a matter of law on the Section 2(d) claim. *See* Fed. R. Civ. P. 56(a). Applicant's evidence in support of this assertion includes a search report from the USPTO's Trademark Electronic Search System (TESS) of currently registered and applied for marks that include the words MISS and INTERNATIONAL. However, as the Board noted in the June 29, 2013 order, trademark search reports are not credible evidence of the third-party uses or of the registrations listed therein. *Weyerhaeuser Co. v. Katz*, 24 USPQ2d 1230, 1232 (TTAB 1992); *Burns Philip Food Inc. v. Modern Products Inc.*, 24 USPQ2d 1157, 1159 n. 3 (TTAB 1992), *aff'd unpublished*, 28 USPQ2d 1687 (Fed. Cir. 1993); June 29, 2013 order at 7 n.6. Indeed, the search report does not indicate the goods and/or services with which any of the third-party marks are used. Accordingly, the search report is not entitled to any probative value. *Centraz Industries Inc. v. Spartan Chemical Co.*, 77 USPQ2d 1698, 1701 (TTAB 2006).

Applicant also argues extensively that the parties' services are different because Applicant's contestants are clothed, whereas Opposers' contestants appear onstage nude. However, the services in Opposers' pleaded registration are identified as "entertainment services in the nature of promoting and conducting beauty pageants," while the services in Applicant's involved application are recited as "Entertainment services in the nature of conducting

beauty pageants and talent contests." If Opposers can rely upon ownership of the pleaded registration herein, the issue of likelihood of confusion between applied for and registered marks must be determined based on the services as they are identified in the involved application and pleaded registration and not on any extrinsic evidence regarding the specific nature of the parties' services. *Paula Payne Products Company v. Johnson Publishing Co., Inc.*, 177 USPQ 76 (CCPA 1973). If Opposers cannot rely upon the pleaded registration, they would not be precluded from relying upon any existing prior common law rights in the MISS NUDE INTERNATIONAL mark in support of the pleaded standing and Section 2(d) claim. *See* Trademark Act Section 2(d), 15 U.S.C. § 1052(d); *King Candy Co. v. Eunice King's Kitchen, Inc.*, 182 USPQ 108, 110 (CCPA 1974).

Further, where the services in an application are broadly described and there are no limitations in the recitation of services as to their nature, type, channels of trade or classes of purchasers, we must presume that the scope of the application encompasses all services of the nature and type described, that the identified services move in all normal trade channels of trade for such services, and that the services would be purchased by all potential customers. *See In re Elbaum*, 211 USPQ 639 (TTAB 1981). Accordingly, the Board must presume that Applicant conducts all types of beauty pageants and talent contests, including those in which contestants appear onstage

nude. Based on the foregoing, Applicant's motion for summary judgment is denied.

Turning to Opposers' cross-motion, we find that Opposer has failed to meet its initial burden of establishing that there is no genuine dispute as to any material fact regarding its pleaded standing and Section 2(d) claim and that it is entitled to entry of judgment as a matter of law. Even if we assume that the parties' services are legally identical, we find, at a minimum, that there are genuine disputes as to the similarity or dissimilarity of the marks when considered in their entireties,[14] as to the strength of Opposers' pleaded mark, and as to the scope of protection to which that mark is entitled. Based on the foregoing, Opposers' cross-motion for summary judgment is denied.[15]

Proceedings herein are resumed. Remaining dates are reset as follows.

Plaintiff's 30-day Trial Period Ends	**11/29/2014**
Defendant's Pretrial Disclosures Due	**12/14/2014**
Defendant's 30-day Trial Period Ends	**1/28/2015**
Plaintiff's Rebuttal Disclosures Due	**2/12/2015**
Plaintiff's 15-day Rebuttal Period Ends	**3/12/2015**

[14] The involved application includes a disclaimer of G-STRING INTERNATIONAL, while the pleaded registration includes a disclaimer of NUDE INTERNATIONAL. Disclaimed matter is typically less significant in creating a mark's commercial impression. *See In re Code Consultants, Inc.*, 60 USPQ2d 1699, 1702 (TTAB 2001). However, we must consider the marks as a whole, including disclaimed matter, when determining the question of likelihood of confusion. *See All England Lawn Tennis Club (Wimbledon) Limited v. Creations Aromatiques, Inc.*, 220 USPQ 1069, 1071 (TTAB 1983).

[15] The parties should note that evidence submitted in connection with the motions for summary judgment is of record only for consideration of those motions. To be considered at final hearing, any such evidence must be properly introduced in evidence during the appropriate trial period. *See Levi Strauss & Co. v. R. Josephs Sportswear Inc.,* 28 USPQ2d 1464 (TTAB 1993); *Pet Inc. v. Bassetti*, 219 USPQ 911 (TTAB (1983); *American Meat Institute v. Horace W. Longacre, Inc.*, 211 USPQ 712 (TTAB 1981).

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.