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

Proceeding	91204404
Party	Defendant Vincent Motors LLC
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

DAVID M. HOLDER,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91204404
)	Cancellation No. 92055541
VINCENT MOTORS LLC/)	
EICHER MOTORS LTD.)	
)	
Applicant.)	

**APPLICANT VINCENT MOTORS LLC’S (AND EICHER MOTORS LTD.’S)¹
OPPOSITION TO OPPOSER HOLDER’S MOTION FOR RECONSIDERATION OF
THE BOARD’S DECEMBER 17, 2014, ORDER**

On December 17, 2014, the Trademark Trial and Appeal Board issued a decision in the above-captioned proceeding (1) granting in part and denying in part Applicant Vincent’s Motion to Strike Opposer David M. Holder’s Reply to Applicant’s Opposition to Holder’s Motion for Summary Judgment, and (2) granting in part and denying in part Opposer Holder’s Motion for Summary Judgment.² The Board denied summary judgment to Holder with respect to his opposition to Vincent’s intent-to-use application³ in Class 9 for motorcycle helmets, concluding:

¹ As noted in Applicant’s past filings in this proceeding, Vincent Motors LLC assigned to Eicher Motors Ltd. all rights, title, and interest in and to the marks that are the subject of the instant proceeding. For ease of reference, this motion refers to Vincent Motors LLC and Eicher Motors Ltd. collectively as “Vincent,” consistent with the Board’s nomenclature in its December 17, 2014, Order.

² See Order, Dec. 17, 2014, ECF No. 44. The Board also denied Applicant’s Motion to Substitute Party. *See id.*

³ App. Serial No. 85397317, filed Aug. 13, 2011 (published for opposition Jan. 31, 2012).

Vincent may . . . rely on the filing date of the application, *i.e.*, August 13, 2011, as its constructive date of first use. . . . Holder did not submit any evidence showing that he has used the mark VINCENT with the identified goods *i.e.*, motorcycle helmets. Nor has Holder submitted evidence to show that there is no genuine dispute as to the relatedness of motorcycle helmets and any of the goods for which Holder has shown use of his mark. Consequently, Holder has not met his burden of establishing that there is no genuine dispute as to material facts and that he is entitled to judgment as a matter of law on the ground of likelihood of confusion as to the goods identified in Class 9.⁴

On January 16, 2015, Holder filed a Motion for Reconsideration of the Board’s denial of summary judgment with respect to motorcycle helmets, arguing: (1) “[m]otorcycle helmets are clothing,”⁵ and therefore the Board’s finding that Holder showed priority of use of the VINCENT mark in connection with clothing encompasses motorcycle helmets; and (2) Vincent’s use of the mark on motorcycle helmets is likely to cause confusion with Holder’s use of the marks on clothing and motorcycle parts.⁶ Because Holder fails to point to a single mistake made by the Board in reaching its decision,⁷ however, and instead rehashes arguments and issues

⁴ Order at 18, 20.

⁵ It is unclear from Holder’s motion, but he also appears to contend that motorcycle helmets should also be in Class 12. *See* Opposer’s Mot. for Recons. at 1, Jan. 16, 2015, ECF No. 46 (“[S]ummary judgment was granted as to the other goods in Class 12 of the application, *namely*, motorcycles . . .”). Even this statement is not correct. The Board did not rule explicitly as to motorcycles, but instead ruled as to motorcycle parts and clothing. *See* Order at 19 n.12. Vincent’s Motion for Reconsideration explains why even that ruling was a mistake and should be reversed. *See* Applicant’s Mot. for Recons., Jan. 20, 2015, ECF No. 48.

⁶ *See generally* Opposer’s Mot. for Recons. Vincent’s Motion for Reconsideration is also pending. *See* Applicant’s Mot. for Recons. Unlike Vincent’s Motion for Reconsideration, which points to a mistake made by the Board in reaching its decision, Holder’s Motion for Reconsideration does not point to a single mistake made by the Board.

⁷ TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 543 (2014) (noting that the movant must generally show the Board erred to warrant reconsideration and may not simply reargue points from the movant’s brief).

already decided by the Board, Vincent respectfully requests that the Board deny Holder's Motion for Reconsideration.

ARGUMENT

I. Holder Is Not Entitled to Reconsideration Because He Fails to Point to a Mistake Made by the Board in Reaching Its Decision.

The Board should grant a motion for reconsideration only upon finding that the Board made a *mistake* in reaching its decision.⁸ As the TBMP explains,

Generally, the premise underlying a request for rehearing, reconsideration, or modification under 37 CFR § 2.129(c) is that, based on the evidence of record and the prevailing authorities, the Board erred in reaching the decision it issued. The request may not be used to introduce additional evidence, nor should it be devoted simply to a reargument of the points presented in the requesting party's brief on the case. Rather, the request normally should be limited to a demonstration that, based on the evidence properly of record and the applicable law, the Board's ruling is in error and requires appropriate change.⁹

Holder's Motion for Reconsideration does not point to a single mistake made by the Board in denying summary judgment with respect to Holder's Class 9 opposition. The Board made two key findings. First, the Board concluded that Vincent demonstrated priority with respect to motorcycle helmets. The Board found that Vincent's constructive date of first use was August 13, 2011, the filing date of its intent-to-use application, whereas Holder "did not submit any evidence showing that he had used the mark VINCENT with the identified goods *i.e.*,

⁸ *See id.* § 543; FED. R. CIV. P. 60(a) ("The court may correct . . . a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record."); FED. R. CIV. P. 60(b)(1) ("[T]he court may relieve a party . . . from a[n] . . . order . . . for . . . mistake . . .").

⁹ TBMP § 543; *see also Nettadoz Enters. v. Cintron Beverage Grp.*, Opp. Nos. 91200692, 91200807, 2013 WL 9838166, at *1 (T.T.A.B. Sept. 26, 2013), *aff'd*, 577 F. App'x 1005 (Fed. Cir. 2014); *Smith v. Entrepreneur Media, Inc.*, Cancellation No. 92053724, 2012 WL 10056746, at *1 (T.T.A.B. Feb. 21, 2012).

motorcycle helmets.”¹⁰ The Board therefore ruled that there was at least a genuine issue of material fact as to priority of use of the mark in connection with motorcycle helmets. Holder’s Motion for Reconsideration, however, fails to highlight a mistake in these findings and conclusions. Indeed, Holder does not cite to a single piece of evidence submitted with his Motion for Summary Judgment showing that Holder used the mark in the United States in connection with motorcycle helmets—let alone evidence inadvertently overlooked by the Board. Instead, Holder points to *his own mistake*, explaining that he “assumed that the proof of prior use on clothing would suffice to prove priority for helmets as well.”¹¹ This explanation does not amount to a mistake by the Board.

Second, the Board concluded that Holder did not satisfy his burden of demonstrating there is no genuine issue of material fact that Vincent’s use of the mark in connection with motorcycle helmets is likely to cause confusion with Holder’s alleged use of the marks with other goods. In reaching this conclusion, the Board reasoned, “[n]or has Holder submitted evidence to show that there is no genuine dispute as to the relatedness of motorcycle helmets and any of the goods for which Holder has shown use of his mark.”¹² Holder’s Motion for Reconsideration, however, fails to highlight a mistake in these findings and conclusions. Instead, Holder cites to the Holder and Healy declaration averments that Holder’s alleged licensee, Coventry Spares, sells clothing and motorcycle parts and accessories under the VINCENT mark—evidence which the Board did *not* overlook and in fact discussed in its Order

¹⁰ Order at 20.

¹¹ Opposer’s Mot. for Recons. at 1.

¹² Order at 20.

before finding a genuine dispute of material fact as to relatedness.¹³ Again, Holder points to no mistake made by the Board in reaching its decision and instead improperly raises a *new* likelihood-of-confusion argument that Holder did not raise in his Motion for Summary Judgment.¹⁴ This is improper.¹⁵

Better characterized, Holder’s Motion for Reconsideration perhaps evinces Holder’s *disagreement* with the Board’s decision—rather than Board mistakes. But a party’s disagreement with a Board decision on summary judgment does not warrant reconsideration.¹⁶ Because Holder failed to point to Board mistakes that “require[] appropriate change,” the Board should deny Holder’s Motion for Reconsideration.

II. Even if Timely Raised in Holder’s Motion for Summary Judgment, Holder’s Arguments Do Not Warrant Judgment as a Matter of Law With Respect to Motorcycle Helmets.

Even if Holder had timely raised the arguments in his Motion for Reconsideration in his Motion for Summary Judgment, which he did not, Holder would still *not* be entitled to summary judgment with respect to motorcycle helmets.¹⁷ Holder first argues that “motorcycle helmets are

¹³ *Id.* at 11, 20.

¹⁴ *See* Opposer’s Mot. for Summ. J., July 25, 2014, ECF No. 37.

¹⁵ *See Smith v. Entrepreneur Media, Inc.*, Cancellation No. 92053724, 2012 WL 10056746, at *1 (T.T.A.B. Feb. 21, 2012) (denying and finding “improper” motion for reconsideration of decision on summary judgment because movant raised new arguments or reargued points previously raised and fully considered by the Board).

¹⁶ *See, e.g., Motion Picture Ass’n of Am., Inc. v. Respect Sportswear, Inc.*, Opp. No. 91153141, 2007 WL 2972232, at *2 n.2 (T.T.A.B. Oct. 2, 2007) (“[E]ven if we were to consider applicant’s motion for reconsideration, we would find it unpersuasive inasmuch as applicant essentially reargues points previously raised in its brief on the merits of the case and expresses its disagreement with our determination thereof.”).

¹⁷ In addition to the arguments raised herein, Vincent hereby incorporates the arguments raised in its Motion for Reconsideration, timely filed with the Board on January 20, 2015, which argues that Holder failed to show there is no genuine issue of material fact that Holder has common law rights in the VINCENT mark in connection with *any* goods in the United States because

clothing,” and he therefore “assumed that the proof of prior use on clothing would suffice to prove priority for helmets as well.”¹⁸ As best Vincent can tell, Holder does not mean to actually argue that he demonstrated use or priority in connection with motorcycle helmets by purportedly using the mark with clothing. Indeed, Holder has never argued use in the United States in connection with motorcycle helmets—including in his Motion for Summary Judgment—and he does not seem to raise it now.¹⁹ Rather, Holder’s motorcycle-helmets-are-clothing argument seems to echo an aspect of his second argument, which is that Holder purportedly used the VINCENT mark in the United States prior to Vincent, in connection with motorcycle parts and accessories and clothing, and Vincent’s use of the mark on motorcycle helmets is likely to cause consumer confusion.²⁰ But as the Board correctly pointed out in its Order, this argument is unsupported by the record: Holder has not “submitted evidence to show that there is no genuine dispute as to the relatedness of motorcycle helmets and any of the goods for which Holder has

evidence Holder cited is inadmissible or insufficient. *See generally* Applicant’s Mot. for Recons. By demonstrating why Holder failed to show no genuine issue of material fact regarding Holder’s purported use and priority of the mark VINCENT in the United States, Vincent’s Motion for Reconsideration provides grounds, independent from the reasons articulated in this brief, why the Board should deny Holder’s Motion for Reconsideration. *See id.*

¹⁸ Opposer’s Mot. for Recons. at 1.

¹⁹ *See* Opposer’s Mot. for Summ. J. This is consistent with Holder’s deposition testimony. *See* Applicant’s Opp’n to Opposer’s Mot. for Summ. J., Ex. 1 at 99:15-100:9, July 28, 2014, ECF No. 38 (“I can finish the question on the helmets a little if you would like because I’ve remembered a little more. . . . I think we ended – well, this is only to be open and honest, which I’m not sure I’m supposed to be doing. . . . I think we ended up with a problem in the U.S., and that is what I think went wrong. That these were European approved and weren’t U.S. approved. . . . It went wrong. . . . I don’t know what we ended up doing with any that come to the U.S.”).

²⁰ Opposer’s Mot. for Recons. at 2-3.

shown use of his mark.”²¹ Thus, Holder’s argument that there is no genuine dispute of material fact regarding likelihood of confusion is unpersuasive.

²¹ Order at 20.

CONCLUSION

For the foregoing reasons, Applicant requests that the Board deny Opposer's Motion for Reconsideration.

Date: January 30, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that the foregoing Opposition to Opposer's Motion for Reconsideration of the Board's December 17, 2014, Order was served upon the following attorney of record for Opposer by email (as agreed by the parties), this 30th day of January, 2015:

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