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

Proceeding	91210863
Party	Plaintiff Chris Economides III
Correspondence Address	CHRIS ECONOMIDES III 3953 AVERA AVENUE WINSTON-SALEM, NC 27106 UNITED STATES TTAB_Got_Ouzo@yahoo.com
Submission	Motion to Dismiss - Rule 12(b)
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Date	07/16/2013
Attachments	Response to objection dismiss.pdf(303355 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK TRIAL AND APPEAL BOARD

OPPOSITION NUMBER 91210863

CHRIS ECONOMIDES, III,)	
an individual,)	
OPPOSER)	
)	RESPONSE TO MOTION
v.)	TO DISMISS
)	
THANCO PRODUCTS AND IMPORTS, INC.,)	
a Texas Corporation,)	
APPLICANT)	

Opposer in this matter Chris Economides, III hereby presents this Response to Applicant's Motion to Dismiss Opposer's Notice of Opposition and states as follows:

Opposer did properly file a Notice of Opposition with the United States Patent and Trademark Office on May 29, 2013 with regard to the pending applications of the Applicant, serial numbers 77378572 and 77369646.

1. Standing

Applicant alleges that Opposer does not have standing to oppose the application and also states that Opposer “does not allege that he uses GOT OUZO? or confusingly similar marks”. (p. 4, lines 21-23)

The United States Patent and Trademark Office has set out clear and definite rules and guidelines with respect to Trademark Prosecution. These rules and guidelines include applications as well as oppositions. Applicant is familiar with these rules and guidelines as they have guided them in their actions so far. Opposer is also familiar with these rules and guidelines and has complied with them so far as they pertain to his Notice of Opposition.

These Trademark Trial and Appeal Board Manual of Procedure clearly state that “Any person who believes that he, she or it is or will be damaged by registration may file a petition....” (TTAB § 2.101(b), § 2.104(a), §2.111(b), §2.112(a)). Opposer has stated in his Notice of Opposition his belief that he is currently damaged, or would be damaged, by registration of the mark as applied for. Opposer also has a history on the public record dating back to January 19, 2011 that alleges damage and potential damage by the potential registration of the mark as applied for.

In their Motion to Dismiss, Applicant claims that Opposer has a real interest if “he alleges a direct and personal stake of the proceeding. T.B.M.P. 309.03(b). Though there are no requirement that actual damage be pleaded in order to establish a real interest in the proceeding, the opposer must show that he has a personal interest in the outcome of the proceeding that is different than or beyond that of the general public. T.B.M.P. 309.03(b); see also *Int’l Order of Job’s Daughters v Lindeburg & Co.*, 727 F.2d 1087, 1092 (T.T.A.B. 1984)” (p. 4, lines 7-12).

The applicant quotation of this rule is a misrepresentation of the intent of the rule as he has failed to finish the remainder of T.B.M.P. Section 309.03(b) in which it specifically states “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 its belief of damage.’” (*Ritchie v*

Simpson, 170 F.3d 1092, 50 USPQ2d 1023, 1025 (Fed. Cir. 1999) and Lipton Industries, Inc. v Ralston Purina Co., 670 F.2d 1024, 213 USPQ 185, 189 (CCPA 1982).

This section continues to identify what a “real interest” is by stating:

“A real interest in the proceeding and a reasonable belief of damage may be found, for example, where plaintiff pleads (and later proves):

Plaintiff has a bona fide intent to use the same mark for related goods, and is about to file an intent-to-use application to register the mark, and believes registration of the mark will be refused in view of the respondent’s registration.” (American Vitamin Products, Inc. v Dow Brands Inc., 22 USPQ2d 1313, 1314 (TTAB 1992).

Opposer has made his pleading and now prepares to prove his claims in the trial period, as is the proper procedure as outlined by the rules and regulations of the United States Patent and Trademark Office.

Opposer has a direct and personal stake in the proceeding that originated with his original Cancellation proceeding against the mark GOT OUZO? (Registration number 3246800). This cancellation proceeding was terminated without prejudice due to the outcome of Applicant’s civil case regarding the same mark. In that cancellation proceeding, a matter of public record, Opposer states that he is unable to offer merchandise with the mark GOT OUZO? due to the existing registration. Applicant is aware of that Cancellation proceeding due to the fact that they subsequently sent a letter to Opposer threatening action if he used the mark GOT OUZO?. Consequently, this is the reason that Opposer does not now make claim in the Notice of Opposition that he is currently using the mark as applied for. Opposer clearly stated in his cancellation proceeding that he had an intent to use the mark GOT OUZO?. This cancellation proceeding is a matter of public record and accessible to anyone through the website of the United States Patent and Trademark Office by using a basic trademark search feature, Trademark Electronic Search System (TESS).

In determining whether to grant a motion to dismiss under Federal Rule 12(b)(6), the court primarily considers the allegations in the complaint as well as matters of public record, as found in Hal Roach Studios v Richard Feiner & Co., 896 F.2d 1542, 1555 n. 19 (9th Cir. 1990); Emrich v

Touche Ross & Co., 846 F.2d 1190, 1198 (9th Cir. 1987); Mack v South Bay Beer Distributors, Inc., 798 F.2d 1279, 1282 (9th Cir. 1986).

Opposer again shows that he has, and has had, a ‘real interest’ in the proceeding and that his ‘reasonable basis’ for his belief of damage is the letter from Applicant through the same legal firm as is currently before the United States Patent and Trademark Office proceeding. A copy is able to be introduced during the Trial Period.

The United States Patent and Trademark Office states clearly in the Trademark Trial and Appeal Board Manual of Procedure (T.M.B.P.) that “A notice of opposition must include (1) a short and plain statement of the reason(s) why oppose believes it would be damaged by the registration of the opposed mark.” (T.M.B.P. § 309.03(a)(2)).

Opposer provided in his Notice of Opposition a “short and plain statement” of his reasons of belief of potential damage, as well as his standing, and has fulfilled his obligation under the rules and regulations of the United States Patent and Trademark Office.

2. Claim

Applicant states in their Motion to Dismiss that Opposer has failed to state the elements of the claim plainly and succinctly (p. 6, line 1). They also refer to these as “cryptic claims set forth in his Opposition” (p.2, line 1). And further, they allege that they do not have “a fair idea of the complaint” (p. 6, line 2). Subsequently, Applicant then spends six pages of their supporting memorandum to attempt to dispute the claims made in the Notice of Opposition.

Opposer listed his elements of the claim in a “short and plain” statement, listing each claim and then providing a clear, yet concise explanation of each claim. At times, these claims also had sub claims, which were also explained in a clear, yet concise format.

During this lengthy memorandum Applicant details each of the claims listed in the Notice of Opposition and argues with minutia details of what the claims offered by the Opposer should have been. Clearly, these arguments show that the Applicant has more than a “fair idea” of the complaint.

The case citation that Applicant lists in their motion is *Ashcroft v Iqbal*, 556 U.S. 662, 677-678 (2009) further supporting *Bell Atlantic Corp. v Twombly*, 550 U.S. 544, 555 (2007) which states that “Sufficient detail must be given so that the [applicant] may obtain a fair idea of the [opposer’s] complaint” (finding that the pleading standard “does not require *detailed* factual allegations” (emphasis added)).

The requirement upon the Opposer is that he, she or it must insure that the Applicant has a “fair idea of the complaint.” Clearly, Applicant has a “fair idea of the complaint” as evidenced by their writings in this memorandum. A review of the Notice of Opposition shows the basis of each complaint and also shows at least one supporting statutory basis for the claim.

The United States Patent and Trademark Office Trademark Trial and Appeal Board Trademark Manual for Procedure Section 309.03(c) states:

“A plaintiff must also plead (and later prove) a statutory ground or grounds for opposition or cancellation. A plaintiff may raise any available statutory grounds for opposition or cancellation that negates the defendant’s right to registration.” See *Young v AGB Corp.*, 152 F.3d 1377, 47 USPQ2d 1752, 1755 (Fed. Cir. 1998); *Jewelers Vigilance Committee Inc. v Ullenberg Corp.*, 823 F.2d 490, 2 USPQ2d 2021, 2023 (Fed. Cir. 1987); *Lipton Industries, Inc. v Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 189 (CCPA 1982); *Estate of Biro v Bic Corp.*, 18 USPQ2d 1382, 1386 (TTAB 1991); *Marmark Ltd. V Nutrexpo S.A.*, 12 USPQ2d 1843, 1844 (TTAB 1984); and *Crocker National Bank v Canadian Imperial Bank of Commerce*, 223 USPQ 909, 910 n. 10 (TTAB 1984).

Opposer also offers that, in the ESTTA template for submitting a Notice of Opposition, there are Grounds for Opposition automatically listed from which an Opposer may select a claim or claims upon which to base a Notice of Opposition. Included along with each potential Ground for Opposition is a statutory basis for said potential Ground for Opposition.

Opposer, in his filing of his Notice of Opposition, selected several claims from the provided list of potential Grounds for Opposition and the corresponding statutory ground. Opposer argues that if the statutory basis for each potential Ground for Opposition was provided to the Opposer by the United States Patent and Trademark Office then clearly these claims are sufficient in the eyes of the United States Patent and Trademark Office upon which to base a Notice of Appeal.

Opposer also shows that T.M.B.P. Section 309.03(c) lists examples of available grounds for opposition. Among these examples are that the mark is “merely descriptive” (Section 309.03(c)(2); or that the mark is “geographically descriptive” Section 309.03(c)(2); that the mark “has not become distinctive” (Section 309.03(c)(9).

A basic review of the Opposer’s Notice of Opposition shows that he has included these three claims, among others. If these claims are included in his Notice of Opposition, and the supporting statutory claims were automatically listed on the Notice of Opposition by the United States Patent and Trademark Office, then he has fulfilled his requirement for stating a claim.

Clearly, the T.M.B.P. intends, through its verbiage stating “...and later prove”, that an Opposer not only must prove his, her, or its pleadings during the trial period but that an Opposer must be given the opportunity to prove these pleadings. Opposer shows that he has made a Notice of Opposition which has complied with the requirements of the United States Patent and Trademark Office for this stage of the proceedings.

Applicant also argues in their motion that the Opposer “has not successfully pleaded a single claim” (p.6, line 14).

Opposer is not required to argue the claims presented in the Notice of Opposition at this point. Applicant is aware of this and the obligations of the Opposer during this point in the proceeding. Applicant’s argument actually supports Opposer’s current threshold of responsibility when they write in their memorandum “[Opposer] must also allege facts which would, *if proved*, establish that there is a valid ground for opposing [Applicant’s] applications.’ Young, 152 F.3d at 1380.” (emphasis added).

The courts have a long history with regard to a motion to dismiss based on F.R.C.P. 12(b)(6) and have written that “It is not a procedure for resolving a contest about the facts or the merits of the case. In reviewing the sufficiency of the complaint, the issue is not whether the plaintiff will ultimately prevail but whether the plaintiff is entitled to offer evidence to support the claims asserted.” *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974).

The United States Patent and Trademark Office lists on its ESTTA website a guideline for a notice of opposition. In that guideline it states:

“A proper pleading for a notice of opposition or petition for cancellation contains a ‘short and plain statement of the claim showing that the [filer] is entitled to relief. The pleading states in numbered paragraphs facts which if *proven* would establish that the oppose has (1) standing to oppose registration or to petition for cancellation; and (2) a legal ground for opposition or cancellation. The filer does not have to actually prove these allegations at this time, but must have a good faith belief in their truth.”
<http://estta.uspto.gov/docs/help.html>).

3. Conclusion

The United States Patent and Trademark Office specifically qualifies that the proceedings will be conducted in accordance with the Trademark Rules of Practice. Opposer shows that he has properly submitted a Notice of Opposition pursuant to the rules and guidelines of the United States Patent and Trademark Office Trademark Trial and Appeal Board and the appropriate governing federal laws.

Opposer has submitted a claim in his Notice of Opposition that he believes he is or would be damaged by registration of the mark as applied for, as required of him.

Opposer has also supplied a list of allegations in his Notice of Opposition which, if proven during the trial period, would establish that there is a legal ground for opposition, as required of him.

Opposer further shows that by the extent of the argument presented by the Applicant in their memorandum in support of their motion to dismiss they have a clear understanding of the claims and allegations presented by the Opposer in his Notice of Opposition.

Due to the fact that the Opposer has met his burden at this point in the procedure he shows that this motion to dismiss should be denied and that the Opposer should be allowed to present his case to prove the allegations. If, at that time, Applicant again feels that the Opposer has not “successfully pleaded” his case they may then file a motion for summary judgment.

Respectfully submitted this 16th day of July, 2013

/Chris Economides III/

Chris Economides III

CERTIFICATE OF SERVICE

I, Chris Economides III, do hereby affirm that a true and correct copy of the attached Response to Motion to Dismiss is being electronically transmitted to the United States Patent and Trademark Office Trademark Trial and Appeal Board on July 16, 2013. Further, a true and correct copy is being sent on the same date to Applicant by depositing with the United States Postal Service via first class mail, with proper postage at the address below:

Peter Harvey
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 /Chris Economides III/

Chris Economides III