

THIS DECISION IS NOT
A PRECEDENT OF THE
TTAB

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

WINTER

Mailed: November 5, 2014

Opposition No. 91211873

Green Ivy Educational Consulting, LLC

v.

Green Ivy Holdings LLC

**Before Seeherman, Ritchie, and Masiello,
Administrative Trademark Judges.**

By the Board:

This case now comes up for consideration of Opposer's fully briefed motion (filed June 18, 2014) for sanctions and for summary judgment on its claim of likelihood of confusion. In accordance with the Board's order mailed June 23, 2014, we treat Opposer's motion solely as one for summary judgment.

Summary judgment is an appropriate method of disposing of cases in which there is no genuine dispute with respect to any material fact, thus leaving the case to be resolved as a matter of law. *See* Fed. R. Civ. P. 56(c)(1). A party moving for summary judgment has the burden of demonstrating the absence of any genuine dispute as to a material fact, and that it is entitled to

judgment as a matter of law. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Sweats Fashions, Inc. v. Pannill Knitting Co. Inc.*, 833 F.2d 1560, 4 USPQ2d 1793, 1796 (Fed. Cir. 1987). A factual dispute is genuine if, on the evidence of record, a reasonable fact finder could resolve the matter in favor of the non-moving party. *See Opryland USA Inc. v. Great American Music Show Inc.*, 970 F.2d 847, 23 USPQ2d 1471, 1472 (Fed. Cir. 1992); *Olde Tyme Foods, Inc. v. Roundy's, Inc.*, 961 F.2d 200, 22 USPQ2d 1542, 1544 (Fed. Cir. 1992).

Additionally, the evidence of record and all justifiable inferences that may be drawn from the undisputed facts must be viewed in the light most favorable to the non-moving party. *See Lloyd's Food Products Inc. v. Eli's Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993); and *Opryland USA*, 23 USPQ2d at 1472. Further, in considering whether summary judgment is appropriate, the Board may not resolve genuine disputes as to material facts and, based thereon, decide the merits of the opposition. Rather, the Board may only ascertain whether any material fact cannot be disputed or is genuinely disputed. *See Lloyd's Food Products*, 25 USPQ2d at 2029; and *Olde Tyme Foods* 22 USPQ2d at 1542.

To prevail on summary judgment on its claim of likelihood of confusion, Opposer must establish that there is no genuine dispute that it has standing to maintain this proceeding; that it has priority of use; and that contemporaneous use of the parties' respective marks on their respective

goods or services would be likely to cause confusion, mistake or to deceive consumers. See 15 U.S.C. § 1052(d); and *Hornblower & Weeks, Inc. v. Hornblower & Weeks, Inc.*, 60 USPQ2d 1733, 1735 (TTAB 2001). Based on our review of the parties' arguments and supporting papers,¹ we find that Opposer, as the party moving for summary judgment, has not met its burden of establishing that there is no genuine dispute as to material facts and that it is entitled to judgment as a matter of law on its claim of likelihood of confusion. At a minimum,² there exists a genuine dispute as to the nature of Opposer's tutoring services and educational programs; the degree of relatedness between Opposer's various educational services and those of Applicant; and the date when Opposer began to offer each of its educational services in connection with the GREEN IVY mark. Notably, the exhibits attached to Anahita Homayoun's declaration do not demonstrate, beyond dispute, use of the GREEN IVY mark in connection with all of relevant services on a date prior to the filing date of the opposed applications. In view thereof, summary judgment on Opposer's claim of likelihood of confusion is **denied**.

¹ The parties should note that evidence submitted in support of or in opposition to a motion for summary judgment is of record only for consideration of that motion. Any such evidence to be considered at final hearing must be properly introduced in evidence during the appropriate trial period. See, e.g., *Levi Strauss & Co. v. R. Joseph Sportswear Inc.*, 28 USPQ2d 1464 (TTAB 1993). See TBMP § 528.05(a) (2014).

² The fact that we identify only a few material facts that are genuinely in dispute should not be construed as a finding that these are necessarily the only issues that remain for trial.

Proceeding Resumed; Trial Dates Reset

This proceeding is resumed. Applicant is allowed until **FIFTEEN DAYS** from the mailing date of this order to submit a motion for discovery sanctions, failing which Opposer's concerns regarding Applicant's discovery responses (as discussed in its motion for summary judgment) shall be given no further consideration. Trial dates are reset as shown in the following trial schedule:³

Plaintiff's 30-day Trial Period Ends	1/4/2015
Defendant's Pretrial Disclosures Due	1/19/2015
Defendant's 30-day Trial Period Ends	3/5/2015
Plaintiff's Rebuttal Disclosures Due	3/20/2015
Plaintiff's 15-day Rebuttal Period Ends	4/19/2015

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. *See* Trademark Rule 2.125, 37 C.F.R. § 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b), 37 C.F.R. §§ 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129, 37 C.F.R. § 2.129.



³ It is noted that Opposer filed its summary judgment motion after the pretrial disclosure due date.