

THIS OPINION IS NOT A  
PRECEDENT OF THE  
TTAB

United States Patent And Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500

WINTER

Mailed: February 11, 2015

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 November 26, 2014) for reconsideration of the Board's order issued November 5, 2014, denying Opposer's motion for summary judgment on its claim of likelihood of confusion.

In our November 5, 2014 order denying Opposer's motion for summary judgment, we stated as follows:

"[A]t a minimum, 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.

We also noted, in particular, that "the exhibits attached to Anahita Homayoun's declaration do not demonstrate, beyond dispute, use of the

GREEN IVY mark in connection with all of the relevant services on a date prior to the filing date of the opposed applications” (order at 3).

In the subject motion, Opposer argues that the Board erred (i) by, assertedly, requiring Opposer to show with documentary evidence that it used its marks with *all* of the relevant services on a date prior to the filing dates of the opposed applications, thus, misapplying the legal standard applicable to Opposer’s burden of proof, and (ii) by not identifying any specific evidence set forth by Applicant that gives rise to a material issue of fact. Rather, Opposer contends that it had to show prior use of only one service that is related to the services proposed to be offered by Applicant (motion at 3) and that the Homayoun declaration was sufficient evidence to establish such priority and relatedness of the parties’ services.

#### Decision

The premise underlying a motion for reconsideration under Trademark Rule 2.127(b) is that, based on the facts before the Board at the time an order or decision was under consideration, the Board erred in reaching the order or decision it issued. Such a motion may not properly be used to simply reargue the points that were presented or should have been presented in a brief on the original motion. Rather, the motion should be limited to a demonstration that, based on the facts before it at such time and the applicable law, the Board’s ruling is in error and requires appropriate change. *See* TBMP § 518 (2014).

We turn first to Opposer's claim that we committed error by requiring it to demonstrate with documentary evidence that Opposer had used its marks with all of Opposer's services on a date prior to the filing dates of the opposed applications. Opposer is correct that it needed to demonstrate only that it had made prior use of its mark in connection with one of its services, as long as it also demonstrated there was no genuine issue that the service was related to one of the services in the opposed application. However, Opposer failed to do this. For instance, the exhibits attached to the Homayoun declaration, read in conjunction with the declarant's statements, raise questions of material fact regarding the nature of the services that Opposer provided prior to Applicant's 2012 filing dates and their relatedness to Applicant's identified services. Few of the statements in the Homayoun declaration are dated in such a way as to clearly indicate the nature of the services provided prior to 2012. Those that are so dated are relatively nonspecific as to the nature of the services (*see, e.g.*, Homayoun dec., ¶8, "after-school tutoring and learning support services"; ¶14, "consultant to develop solutions ... presented to and consulted with educators, faculty, and administrators ... on a variety of education and parenting topics"). Similarly, most of the exhibits attached to the Homayoun declaration are of recent provenance and cannot prove the nature of the services provided prior to 2012. The services that, according to the declaration, Opposer provided prior to 2012, are either described very generally or their description is open to

interpretation. Thus, Opposer has not demonstrated the lack of a genuine dispute that they are related to those set forth in the applications.

Accordingly, we find no error in our denial of Opposer's motion for summary judgment. Accordingly, Opposer's motion for reconsideration is hereby **DENIED**.

Proceeding Resumed; Trial Dates Reset

This proceeding is resumed. Trial dates are reset as shown in the following schedule:

<b>Plaintiff's 30-day Trial Period Ends</b>	<b>4/12/2015</b>
<b>Defendant's Pretrial Disclosures Due</b>	<b>4/27/2015</b>
<b>Defendant's 30-day Trial Period Ends</b>	<b>6/11/2015</b>
<b>Plaintiff's Rebuttal Disclosures Due</b>	<b>6/26/2015</b>
<b>Plaintiff's 15-day Rebuttal Period Ends</b>	<b>7/26/2015</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. *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.

