

THIS OPINION 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: July 31, 2015

Opposition No. 91212024

*Republic Technologies (NA), LLC*

*v.*

*Brooks Entertainment Inc.*

**Before Mermelstein, Ritchie, and Hightower,  
Administrative Trademark Judges.**

**By the Board:**

This case now comes up for consideration of Applicant's motion (filed October 1, 2014<sup>1</sup>) for summary judgment on Opposer's claim of likelihood of confusion.

We presume the parties' familiarity with the pleadings, arguments and materials submitted in connection with the subject motion.

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). The party seeking summary judgment has the initial burden of establishing the absence of any genuine issues of material fact and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986);

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<sup>1</sup> We note that our consideration of the subject motion was delayed by four motions filed by the parties, which were considered by the Board on March 27, 2015.

*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.

Based on our review of the parties' arguments and supporting evidence,<sup>2</sup> and drawing all inferences in favor of the non-movant, we find that Applicant 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 Opposer's claim of likelihood of confusion. At a minimum,<sup>3</sup> there exists a genuine dispute as to whether the commercial impressions evoked by the parties' respective marks are so dissimilar as to preclude a finding of likelihood of confusion. Accordingly,

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<sup>2</sup> 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); TBMP § 528.05(a) (2015).

<sup>3</sup> The fact that we identify only one material fact that is genuinely in dispute should not be construed as a finding that this is necessarily the only issue that remains for trial.

Applicant's motion for summary judgment on Opposer's claim of likelihood of confusion is **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>10/14/2015</b>
<b>Defendant's Pretrial Disclosures Due</b>	<b>10/29/2015</b>
<b>Defendant's 30-day Trial Period Ends</b>	<b>12/13/2015</b>
<b>Plaintiff's Rebuttal Disclosures Due</b>	<b>12/28/2015</b>
<b>Plaintiff's 15-day Rebuttal Period Ends</b>	<b>1/27/2016</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.

