UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Alexandria, VA 22313-1451
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Mailed: January 16, 2015

Opposition No. 91212112

Quintessential Brands S.A.

v.

Jordan Gerberg

Before Bucher, Ritchie and Adlin,
Administrative Trademark Judges.

By the Board:

Jordan Gerberg ("Applicant") seeks to register the following mark[1] for "Distilled Spirits; Spirits; Spirits and liqueurs" in International Class 33:

Quintessential Brands S.A. ("Opposer") opposes registration of Applicant's mark on the ground of likelihood of confusion with the following registered mark[2] for "alcoholic beverages, namely, gin" in International Class 33:

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[1] Application Serial No. 85859169, filed February 25, 2013, based on an assertion of a *bona fide* intent to use the mark in commerce under Trademark Act Section 1(b).

[2] Registration No. 3224142, issued April 3, 2007.

Applicant, in its answer, denied the salient allegations in the notice of opposition.

This case now comes up for consideration of Applicant's motion (filed July 23, 2014) for summary judgment in its favor on the likelihood of confusion claim.

Summary judgment is only appropriate when there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a). The Board may not resolve issues of material fact; it may only ascertain whether a genuine dispute regarding a material fact exists. *See Lloyd's Food Products, Inc. v. Eli's, Inc.,* 987 F.2d 766, 766, 25 USPQ2d 2027, 2029 (Fed. Cir. 1993); *Olde Tyme Foods,* 961 F.2d at 200, 22 USPQ2d 1542 (Fed. Cir. 1992). 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. *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.,* 22 USPQ2d at 1544.

After reviewing the parties' arguments and supporting evidence, we conclude that disposition of this matter by summary judgment is not appropriate because, at a minimum, there exists a genuine dispute of material fact as to the degree of dissimilarity between the parties' marks, including their appearance, sound,

connotations, and overall commercial impressions.[3] In view thereof, Applicant's motion for summary judgment is hereby denied.[4]

Proceedings herein are resumed. Opposer's withdraw of its motion to reopen is acknowledged and its consented motion to suspend (both filed on July 31, 2014) is moot. Dates are reset as follows:

Plaintiff's 30-day Trial Period Ends	**3/25/2015**
Defendant's Pretrial Disclosures	**4/9/2015**
Defendant's 30-day Trial Period Ends	**5/24/2015**
Plaintiff's Rebuttal Disclosures	**6/8/2015**
Plaintiff's 15-day Rebuttal Period Ends	**7/8/2015**

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. Trademark Rule 2.125.

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

[3] The fact that we have identified and discussed only one genuine dispute of material fact as a sufficient basis for denying the motion for summary judgment should not be construed as a finding that this is necessarily the only dispute which remains for trial.

[4] The parties should note that the evidence submitted in connection with the motion for summary judgment is of record only for consideration of the motion. To be considered at final hearing, any such evidence must be properly introduced in evidence during the appropriate trial period. *See Levi Strauss & Co. v. R. Josephs Sportswear Inc.,* 28 USPQ2d 1464 (TTAB 1993).