

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

BUO

Mailed: August 27, 2014

Opposition No. 91213744

*Yuko Fujita*

*v.*

*Pearl Enter., LLC*

**By the Trademark Trial and Appeal Board:**

Now before the Board is applicant's motion, filed May 6, 2014, to dismiss the notice of opposition based upon applicant's allegation that the Board lacks jurisdiction to hear this case. Applicant alleges that "[o]pposer 'Yuko Fujita' appears to be nothing more than a pseudonym for Kenrico Ltd." and "[t]he Board has no jurisdiction over fictional parties or non-jural entities," thus the opposition should be dismissed.

In response, opposer submitted a declaration attesting that opposer is indeed an individual Japanese citizen. Opposer asserts that she licenses the mark to the company Kenrico Ltd., and that she listed the address of Kenrico Ltd., in order to protect her privacy as she did not "want [her] personal home address to be listed in the public trademark records."

The motion has been fully briefed.<sup>1</sup>

Applicant indicates in its reply brief that the Board should not consider the declaration filed by opposer, citing the alleged dubious nature of opposer's signature, and asserting that opposer "fail[ed] to supply any identity document such as a Passport or driver's license or citizenship certificate to show the true and full legal name, gender, and identity of the claimed Opposer." Applicant does not cite any statute, rule, or case that supports the requirement that these documents must be supplied to the Board. In fact, there is no requirement for individuals to supply such documentation to institute or maintain a proceeding before the Board.

At its base applicant's motion is not one properly made for dismissal of the proceeding, but an attack on the ownership of the pleaded registration. However, the name of the party on the issued registration certificate is the same as the name provided in the extension requests, and the same name of the opposer who ultimately filed the notice of opposition.

Under Trademark Act Section 7, 15 U.S.C. § 1057(b), a registration certificate is *prima facie* evidence of, *inter alia*, the owner's ownership of the mark.<sup>2</sup> Thus, inasmuch as the gravamen of applicant's contention goes to

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<sup>1</sup> Applicant's reply brief, filed May 29, 2014, is noted.

<sup>2</sup> Opposer included, with its notice of opposition, a printout from the USPTO's TSDR Database (Trademark Status and Document Retrieval) showing current status and title of its pleaded registration. *See* Trademark Rule 2.122(d)(1) (general rule that exhibits attached to pleadings are not evidence on behalf of the submitting party has two exceptions – current status and title copies, or photocopies of the pleaded registration(s) prepared by the USPTO, or current printouts of information from the electronic database records of the USPTO showing the current status and title of the registration(s)).

ownership of the pleaded registration *vis-à-vis* opposer's identity, it is properly asserted as a compulsory counterclaim, and not a motion to dismiss. *See* Trademark Rule 2.106(b)(2)(i) (an attack on the validity of any one or more of the registrations pleaded in the opposition shall be a compulsory counterclaim if grounds for such counterclaim exist at the time when the answer is filed.). Consequently, inasmuch as applicant has not filed its answer, any counterclaim asserted by applicant, or intended to be asserted by applicant by this filing, is premature at this time and will be given no consideration by the Board. *Id.* (the counterclaim shall be pleaded with or as part of the answer); *TBC Corp. v. Grand Prix Ltd.*, 12 USPQ2d 1311, 1313 (TTAB 1989).

To be clear, the Board has jurisdiction over every application or registration brought before it. The Board, unlike civil courts, does not exercise personal jurisdiction over the parties to its proceedings. The Board is empowered only to decide matters of registrability, thus the jurisdiction of the Board must be viewed in the context of applications and registrations, not parties. *See* Trademark Act Section 17, 15 U.S.C. § 1067; TBMP § 102.01 (2014), and authorities cited therein.<sup>3</sup>

Accordingly, applicant's motion to dismiss is **DENIED**.

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<sup>3</sup> An understanding of this is the very basis for any opposition or cancellation proceeding. Applicant is encouraged to review the cited authorities. Applicant's motion, by its very nature, unnecessarily taxes the Board's limited resources. Any further motions of this type, i.e. lacking legal support or citation to advance the propositions asserted, are strongly discouraged.

***Schedule***

Proceedings are **RESUMED**, and applicant is allowed **TWENTY DAYS** from the mailing date of this order to file its answer. The remaining conferencing, disclosure, discovery, and trial dates are reset as follows:

Deadline for Discovery Conference	10/11/2014
Discovery Opens	10/11/2014
Initial Disclosures Due	11/10/2014
Expert Disclosures Due	3/10/2015
Discovery Closes	4/9/2015
Plaintiff's Pretrial Disclosures	5/24/2015
Plaintiff's 30-day Trial Period Ends	7/8/2015
Defendant's Pretrial Disclosures	7/23/2015
Defendant's 30-day Trial Period Ends	9/6/2015
Plaintiff's Rebuttal Disclosures	9/21/2015
Plaintiff's 15-day Rebuttal Period Ends	10/21/2015

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 taking of testimony. Trademark Rule 2.125.

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