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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91214236
Party	Defendant Turner, Nicholas
Correspondence Address	EVAN S COHEN 1180 S BEVERLY DRIVE SUITE 510 LOS ANGELES, CA 90035-1157 esc@manifesto.com
Submission	Motion to Dismiss - Rule 12(b)
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Attachments	TTAB 4WORLD5 12b6 vFINAL.pdf(98420 bytes)

II.

STATEMENT OF FACTS

This proceeding involves the musical group Hawkwind, which is well known in the “progressive rock” genre. Hawkwind was formed in the United Kingdom in late 1969, with Turner being among the original members. “Hawkwind” was a nickname given to Turner by the rest of the band, and the nickname became the name of the group. Turner remained with the group until 1976, and also was a member of the group in the 1980s. Turner’s name is still associated with what many fans consider Hawkwind’s most important period, and, at various times in the past, Turner has performed in the United States as “Nik Turner’s Hawkwind.” On November 9, 2012, Turned filed Application Serial No. 85776225 for NIK TURNER’S HAWKWIND in International Class 41 for “Entertainment services, namely, live musical performances by an individual or musical group.” Turner does not perform as HAWKWIND, nor does he manufacture or authorize the manufacture of goods bearing the HAWKWIND mark.

The application was published on October 29, 2013. Three parties have filed oppositions to the application: (1) Cherry Red, a record company based in the United Kingdom (Opposition No. 91213709); (2) 4Worlds; and (3) Dave Brock (“Brock”), another original member of Hawkwind, who

styles himself as the “leader” of the current incarnation of the band (Opposition No. 91214199). Brock’s Hawkwind has not toured in the United States since 1997 (other than an appearance at one music festival in Pennsylvania in 2007), because several criminal convictions have prevented Brock from securing a work visa for entry into the United States. Turner, by comparison, recently completed a lengthy tour of the United States, performing Hawkwind material.

On December 28, 2013, 4Worlds filed its Notice of Opposition, with the grounds being that 4Worlds is “the current record label” of Brock’s Hawkwind and that 4Worlds “has a direct license with” Brock’s Hawkwind for “live recordings, CDs, vinyl, downloads, MP3s, and promotional items such as t-shirts.” Other than various allegations regarding *products* sold by 4Worlds, the only consequence of Applicant’s use of NIK TURNER’S HAWKWIND, would be, according to 4Worlds, is that such use “is likely to dilute the distinctiveness of the famous HAWKWIND mark.” (Notice of Opposition ¶ 10).

III.

STANDARD OF REVIEW

4Worlds' opposition should be dismissed under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted. While courts liberally construe complaints, "a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of a cause of action's elements will not do." *Bell Atl. Corp. v Twombly*, 127 S. Ct. 1955, 1964 (2007). As set forth below, 4Worlds' opposition sets forth no facts regarding its standing to oppose this application.

IV.

ARGUMENT

Section 13 of the Trademark Act provides, in relevant part, that "[a]ny person who believes that he would be damaged by the registration of a mark upon the principal register, ... may, upon payment of the prescribed fee, file an opposition in the Patent and Trademark Office, stating the grounds therefore..." To assess the requisite showing under the statute, a two-part, judicially-created test requires that opposer must have: (1) a "real interest" in the proceedings and (2) a "reasonable" basis for his belief of damage.

Ritchie v. Simpson, 170 F.3d 1092, 1095, 50 U.S.P.Q. 2d 1023, 1095 (Fed. Cir. 1999).

In its Notice of Opposition, 4Worlds provides a scant few words about why it believes it would be damaged. 4Worlds is a record company that releases Hawkwind recordings. That is all. 4Worlds is not in the business of providing live performances of music (either in the UK or in the United States), and Applicant Turner is not in the business of manufacturing phonorecords containing Hawkwind recordings. Because Turner is not manufacturing Hawkwind phonorecords, 4Worlds' belief that Turner's mark will "detract" from the Hawkwind name is not reasonable; in fact the opposite is true. It could be more easily argued that Turner's mark, and his live performances utilizing NIK TURNER'S HAWKWIND, will *promote* the 4Worlds catalogue of recordings.¹ The purpose of the standing requirement, which is directed solely to the interest of the plaintiff, is to prevent litigation when there is no real controversy between the parties. *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 U.S.P.Q. 185, 189 (C.C.P.A 1982).

¹ Although it might be beyond the scope of this motion, the fact is that Turner not only promotes Hawkwind's music through his performances, he actually sells 4Worlds' products on his tour, *which are knowingly supplied by, and purchased from, 4Worlds.*

Because Turner and 4Worlds are not in competition, and 4Worlds' belief of possible damage is neither rational nor reasonable, this opposition should be dismissed. Indeed, because opposer Brock does have standing, this matter will be litigated fully. The resources of the parties, and the TTAB, should not be squandered litigating the oppositions of two record labels that have no reasonable belief that they could be damaged by Turner's use of his mark.

V.

CONCLUSION

4Worlds has failed to plead any valid reason why it would have standing to oppose Turner's application, and its opposition should be dismissed without leave to amend.

Respectfully submitted,

Dated: January 24, 2014

By: /s/ Evan S. Cohen

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CERTIFICATE OF SERVICE

Applicant Nicholas Turner, by and through his attorney, hereby certifies that a copy of this MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM has been served on Opposer on this 24th day of January 2014, by mailing a true and correct copy via International First Class Mail to the following address:

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