

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

JK

Mailed: May 9, 2016

Opposition No. 91225578

Narrative Capital Partners LLC

v.

Todd Sammann

By the Board:

Todd Sammann (“Applicant”) filed application Serial No. 86541546 on February 20, 2015 to register the mark NARRATIVE CAPITAL (standard characters; CAPITAL disclaimed) for the following International Class 36 services:

Investment of funds for others; private equity fund investment services; funds investment services; financing and loan services; mezzanine financing and loan services; real estate investment services; real estate investment advisory services; financial investment in the field of real estate; real estate funds investment services; financial due diligence services in the field of real estate; and real estate acquisition services.

Narrative Capital Partners LLC (“Opposer”) filed a notice of opposition on the ground of priority and likelihood of confusion pursuant to Trademark Act Section 2(d). Opposer alleges common law rights in the mark NARRATIVE CAPITAL as a trademark and as a trade name, in connection with “lending, investment and other financial services.”¹

¹ 1 TTABVUE 4; Not. of Opp. ¶ 4-5.

In lieu of filing an answer, Applicant filed a motion to dismiss the notice of opposition for failure to state a claim upon which relief may be granted pursuant to Fed. R. Civ. P. 12(b)(6).

Analysis

A motion to dismiss for failure to state a claim upon which relief may be granted is a test solely of the legal sufficiency of a complaint. TBMP § 503.02 (2015), and cases cited therein. To survive a motion to dismiss in a Board *inter partes* proceeding, a plaintiff need only allege sufficient factual matter as would, if proven, establish that 1) the plaintiff has standing to maintain the proceeding, and 2) a valid ground exists for opposing the mark. *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 187 (CCPA 1982). TBMP § 503.02 (2015). Specifically, “a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949-50 (2009), quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). For purposes of determining a motion to dismiss for failure to state a claim upon which relief may be granted, all of the plaintiff’s well-pleaded allegations must be accepted as true, and the complaint must be construed in the light most favorable to the plaintiff. *Advanced Cardiovascular Systems Inc. v. SciMed Life Systems Inc.*, 988 F.2d 1157, 26 USPQ2d 1038, 1041 (Fed. Cir. 1993); *Otto Int’l Inc. v. Otto Kern GmbH*, 83 USPQ2d 1861, 1862 (TTAB 2007). A motion to dismiss for failure to state a claim concerns only one issue - the legal sufficiency of the pleaded claims. *Guess? IP Holder LP v. Knowluxe LLC*, 116 USPQ2d 2018, 2019 (TTAB 2015), citing *Advanced*

Cardiovascular Systems Inc. v. SciMed Life Systems Inc., 26 USPQ2d at 1041. TBMP § 503.02 (2015).

The Board has considered the parties' briefs on the contested motions, but does not repeat or discuss all of their arguments, and does not address irrelevant arguments. *Guess? IP Holder LP v. Knowlux LLC*, 116 USPQ2d at 2019. In adjudicating the motion to dismiss, the Board has given no consideration to materials submitted outside of the pleadings. *Compagnie Gervais Danone v. Precision Formulations LLC*, 89 USPQ2d 1251,1255-56 (TTAB 2009).

To state a claim under Trademark Act Section 2(d), a plaintiff must sufficiently allege 1) standing, 2) it has registered or previously used a mark, and 2) contemporaneous use of the parties' respective marks on or in connection with their respective goods or services would be likely to cause confusion, mistake or to deceive consumers. *Hornblower & Weeks, Inc. v. Hornblower & Weeks, Inc.*, 60 USPQ2d 1733, 1735 (TTAB 2001).

Standing

In its motion, Applicant does not challenge Opposer's standing. Nonetheless, the Board addresses standing inasmuch as it is a threshold issue that must be alleged in every *inter partes* proceeding. *Lipton Industries, Inc. v. Ralston Purina Co.*, 213 USPQ at 189. To allege standing, a plaintiff must sufficiently set forth allegations which, if proven, establish that it has a "real interest," *i.e.*, a direct and personal stake, in the outcome of the proceeding, as well as a "reasonable basis" for its belief

of damage. *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1025-26 (Fed. Cir. 1999); *Lipton Industries, Inc. v. Ralston Purina Co.*, *supra*.

Here, Opposer sets forth a claim of likelihood of confusion that is not wholly without merit, and that claim is based on allegations of prior use of a confusingly similar mark. *Giersch v. Scripps Networks Inc.*, 90 USPQ2d 1020, 1022 (TTAB 2009). By so pleading, Opposer has sufficiently set forth allegations which, if proven, would establish its standing to challenge registration of Applicant's mark.

Ground for Opposition

By way of ¶ 4-5, Opposer alleges that its use of the mark NARRATIVE CAPITAL as a mark, and as a trade name, predates Applicant's application filing date of February 20, 2015, and also predates any priority date associated with the application and any first use of Applicant's mark. In these allegations, Opposer places Applicant on sufficient notice of the basis for its claim of priority.

By way of ¶ 7-10, Opposer alleges that the parties' services are closely related, identical or overlapping, that parties' marks are identical, and that the contemporaneous use of the parties' respective marks on or in connection with their respective services is likely to cause confusion with respect to source, origin, sponsorship or affiliation of the services. In its allegations, Opposer places Applicant on sufficient notice of the basis for its claim that the contemporaneous use is likely to cause confusion.

To briefly address Applicant's arguments, the identities of purchasers of Opposer's services, the particular services Opposer offers under its asserted mark,

the circumstances of Opposer's asserted use, when Opposer first used its asserted mark, and the manner in which Opposer used its asserted mark prior to Applicant's filing date, are all factual matters that Applicant may investigate and probe through discovery devices. For notice pleading purposes, the pleading is sufficient inasmuch as it sets forth all elements of a valid claim. *Fair Indigo LLC v. Style Conscience*, 85 USPQ2d 1536, 1539 (TTAB 2007).

Based on the sufficiency of the pleading, construing Opposer's well-pleaded allegations in the light most favorable to Opposer, the notice of opposition sets forth a Section 2(d) claim, a statutorily available claim upon which relief may be granted. In view of these findings, Applicant's motion to dismiss is denied.

Schedule

Proceedings are resumed. Applicant's time to answer, and disclosure, discovery and trial dates are reset as follows:

Deadline for Required Discovery Conference	7/11/2016
Discovery Opens	7/11/2016
Initial Disclosures Due	8/10/2016
Expert Disclosures Due	12/8/2016
Discovery Closes	1/7/2017
Plaintiff's Pretrial Disclosures due	2/21/2017
Plaintiff's 30-day Trial Period Ends	4/7/2017
Defendant's Pretrial Disclosures due	4/22/2017
Defendant's 30-day Trial Period Ends	6/6/2017
Plaintiff's Rebuttal Disclosures due	6/21/2017
Plaintiff's 15-day Rebuttal Period Ends	7/21/2017

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

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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.