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

Proceeding	91247160
Party	Defendant F.C. Internazionale Milano S.p.A.
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Submission	Motion to Dismiss - Rule 12(b)
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Major League Soccer, L.L.C.,

Opposer,

v.

F.C. Internazionale Milano S.p.A.,

Applicant.

Opposition No. 91247160

App. No. 86/224,449

Mark: INTER

**PARTIAL MOTION TO DISMISS NOTICE OF OPPOSITION
FOR FAILURE TO STATE A CLAIM UNDER FRCP 12(b)(6)**

Applicant F.C. Internazionale Milano S.p.A., ("Applicant") moves to dismiss in part the Notice of Opposition filed by Opposer Major League Soccer, L.L.C. ("Opposer") pursuant to Federal Rule of Civil Procedure 12(b)(6) and TTAB Rule 503.

I. INTRODUCTION

Priority is a threshold issue that must be properly pleaded and proven by any trademark owner opposing the registration of a mark on the ground of a likelihood of confusion.

Opposer has not and cannot allege that it owns prior trademark rights in any mark consisting of or incorporating "INTER." Yet, in Paragraph 21 of its Notice of Opposition, Opposer inexplicably seeks to oppose Applicant's intent-to-use based application for the INTER mark (Serial No. No. 86/224,449) (the "INTER Application") on the ground of a likelihood of confusion under Section 2(d) of the Lanham Act.

The Board should dismiss Opposer's Section 2(d) claim as facially defective and fatally flawed.

II. STANDARD OF REVIEW

In assessing a motion to dismiss, the Board must accept as true all well-pleaded allegations, and must construe the complaint in the light most favorable to the Opposer. *See Advanced Cardiovascular Sys. Inc. v. SciMed Life Sys. Inc.*, 988 F.2d 1157, 26 USPQ2d 1038, 1041 (Fed. Cir. 1993). A motion to dismiss under Rule 12(b)(6) is a test of the sufficiency of a complaint. *Id.*; *see, also, NSM Research Corp. v. Microsoft Corp.*, 113 USPQ2d 1029, 1032 (TTAB 2014).

The allegations in a notice of opposition must "include enough detail to give the defendant fair notice of the basis for each claim." *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 570 (2007). A party must allege sufficient facts beyond "naked assertion[s]" devoid of

“further factual enhancement” to support its claims. A plaintiff must allege well-pleaded factual matter and more than “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,” to state a claim plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007); Fed. R. Civ. P. 8(a)(2).

The Board may consider certain objective, verifiable facts available from Office records under a motion to dismiss, such as the filing date, filing basis, priority date, publication date and Applicant’s name in an application that is the subject of an opposition proceeding. See *Compagnie Gervais Danone v. Precision Formulations LLC*, 89 USPQ2d 1251, 1256 & n.8 (TTAB 2009). “These are facts not subject to proof, and the Board may look to Office records for such facts to determine if a party’s allegations are well pleaded.” *Id.*

III. ARGUMENT

“A party that has filed an intent-to-use application may rely on the filing date of its application to establish priority.” *Id.* at 1251; *Larami Corp. v. Talk To Me Programs Inc.*, 36 USPQ2d 1840, 1845 n. 7 (TTAB 1995) (constructive use provisions may be used both defensively and offensively to establish priority); *see also, Zirco Corp. v. American Telephone & Telegraph Co.*, 21 USPQ2d 1542, 1544 (TTAB 1991) (right to rely on constructive use date comes into existence with filing of intent-to-use application). Applicant may, therefore, claim priority back to the March 18, 2014 date on which it filed the intent-to-use INTER Application.

In support of its Notice of Opposition, Opposer relies on its own application for CLUB INTERNACIONAL DE FUTBOL MIAMI MMXX (Serial No. 88/129,638); however, it filed the application based on an intent-to-use on September 25, 2018 – two and one half years after Applicant filed its INTER Application. In addition, Opposer relies on its alleged common law rights arising from the alleged trademark use of the phrase INTER MIAMI FC in connection

with goods “including but not limited to scarves in Class 25”. Nowhere in the Notice of Opposition, however, does Opposer allege or set forth facts even suggesting that either mark confers upon Opposer prior trademark rights that it can assert against Applicant. In particular, nowhere does Opposer allege that it used or sought to register any mark prior to March 18, 2014 when Applicant filed its INTER application. Opposer has thus not sufficiently alleged prior trademark rights.

In view thereof, and in light of the strict pleading standards imposed by *Twombly* and *Iqbal*, the Board should dismiss Opposer’s 2(d) ground from the Notice of Opposition.

Dated: May 6, 2019

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document is being served upon the Attorney for Opposer via electronic mail this 6th day of May 2019.

/Jeffrey M. Goehring/
Jeffrey M. Goehring