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Trademark Trial and Appeal Board
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WDJ

February 20, 2025

Opposition No. 91272108

Grupo Bimbo, S.A. B. de C.V.

v.

Baron Instruments DBA Shirin Foods

**Before Cataldo, Pologeorgis, and Stanley,
Administrative Trademark Judges.**

By the Board:

This proceeding now comes before the Board for consideration of Opposer's motion, filed November 3, 2024, for summary judgment on its claim that Applicant does not own the applied-for mark.¹ The motion is fully briefed.

I. Background


Applicant Baron Instruments DBA Shirin Foods, a California Corporation, is the owner of application Serial No. 90010461 for the standard character mark TAKDIS

¹ 49 TTABVUE. Opposer's brief was filed under seal. A redacted copy of Opposer's brief appears at 48 TTABVUE.

In this order, the Board cites to the proceeding record by the TTABVUE docket entry number and TTABVUE page number, in accordance with the guidance provided in TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE ("TBMP") §§ 106.03, 702.05 and 801.01 (2024). Specifically, the number preceding TTABVUE corresponds to the docket entry number, and any number(s) following TTABVUE refer to the page number(s) of the docket entry where the cited materials appear.

for use in connection with “Fruit rolls, fruit bars, fruit leather, lavashak in the nature fruit layers, fruit-based organic food bars” in International Class 29.² Opposer Grupo Bimbo, S.A. B. de C.V., a Mexican Corporation, has opposed registration. In its original notice of opposition, Opposer asserted claims of likelihood of confusion under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), and dilution by blurring under Trademark Act Sections 2 and 43(c), 15 U.S.C. §§ 1052 and 1125(c).³ In its amended notice of opposition Opposer added a claim of non-ownership of the applied-for mark pursuant to Trademark Act Section 1(a)(1), 15 U.S.C. § 1051(a)(1).⁴

Opposer pleads ownership of the following registrations:⁵

Reg. No.	Mark	Goods
2770663	TAKIS	Fried corn snacks in International Class 30
3862100	TAKIS NITRO	Fried corn snacks and fried wheat flour snacks in International Class 30
4079594		Corn-based snack foods in International Class 30
4696767	TAKIS ZOMBIE	Corn-based snack foods in International Class 30

² Filed June 19, 2020 under a Section 1(a) use in commerce filing basis, 15 U.S.C. § 1051(a), with a date of first use anywhere and in commerce of February 7, 2017. The application includes the following translation: “The English translation of ‘TAKDIS’ in the mark is ‘single tray’.”

³ 1 TTABVUE.

⁴ 40 TTABVUE 19. Opposer’s motion to amend its pleading was granted by the Board on July 17, 2024. 46 TTABVUE.

⁵ 40 TTABVUE 15-17, ¶ 5.

4698009		Fried corn snacks in International Class 30
4792085	TAKIS XPLOSION	Corn-based snack foods in International Class 30
5377821		Corn-based snack foods in International Class 30
5389626		Corn-based snack foods in International Class 30
5389627		Corn-based snack foods in International Class 30
5687382	TAKIS LAVA	Corn-based snack foods in International Class 30
5687383	TAKIS TITAN	Corn-based snack foods in International Class 30
5938380	TAKIS WILD	Corn-based snack foods in International Class 30

5952800	TAKIS	Meat, fish, poultry and game, not live; meat extracts; canned, dried and cooked fruits and vegetables; jellies, marmalade jams; eggs, powdered eggs, milk and milk products, excluding ice cream, ice milk and frozen yogurt; custards being custard style yoghurts, edible oils and fats, butter, margarine, sausages, cheeses, soups, soup making preparations, yogurt, tomato puree, potato chips, prepared peanuts, dried dates, nuts prepared, raisins and pickles, in International Class 29
6267856	TAKIS	Candy, namely, lollipops, in International Class 30

Opposer also claims common law rights in the TAKIS mark in connection with “food products, including snack foods and related goods.”⁶

Applicant, in its answer to the amended notice of opposition, denies the salient allegations of the amended complaint.⁷ Additionally, Applicant asserts numerous putative affirmative defenses,⁸ all of which are mere amplifications of Applicant’s denials to the allegations in the amended notice of opposition and are not true affirmative defenses, so we do not address them as such. *See, e.g., DeVivo v. Ortiz*, Opp. No. 91242863, 2020 WL 1227592, at *3 (TTAB 2020) (Applicant “raised certain ‘affirmative defenses’ that are mere amplifications of Applicant’s denials, and which we do not consider as separate affirmative defenses.”).⁹

⁶ *Id.* at 14, ¶ 2.

⁷ 47 TTABVUE.

⁸ *Id.* at 4-10.

⁹ As part of an internal Board pilot citation program on broadening acceptable forms of legal citation in Board cases, the citation form in this opinion is in a form provided in TBMP § 101.03. This opinion cites decisions of the U.S. Court of Appeals for the Federal Circuit and the U.S. Court of Customs and Patent Appeals only by the page(s) on which they appear in

Opposer now moves for summary judgment on its claim of non-ownership.

II. Summary Judgment Standard

Summary judgment is an appropriate method of disposing of cases in which there are no genuine disputes as to material facts, thus allowing resolution as a matter of law. *See* Fed. R. Civ. P. 56(a). The burden is on the party moving for summary judgment to demonstrate the absence of any genuine dispute of material fact and that it is entitled to summary judgment as a matter of law. Fed. R. Civ. P. 56(c). In considering the propriety of summary judgment, all evidence must be viewed in the light most favorable to the non-movant, and all justifiable inferences are to be drawn in the non-movant's favor. *See Lloyd's Food Prods., Inc. v. Eli's, Inc.*, 987 F.2d 766, 767 (Fed. Cir. 1993). The Board does not resolve disputes of material fact when determining a motion for summary judgment but rather only ascertains whether disputes of material fact exist. *See Univ. Book Store v. Univ. of Wis. Bd. of Regents*, Opp. No. 91084223, 1994 WL 747886, at *4 (TTAB 1994); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986) (“[A]t the summary judgment stage the judge’s

the Federal Reporter (e.g., F.2d, F.3d, or F.4th). For decisions of the Board, this opinion employs citation to the Westlaw (WL) database. Practitioners should adhere to the practice set forth in TBMP § 101.03. Proceeding and serial numbers also are included for decisions of the Board. Those Board decisions that issued on or after January 1, 2008 may be viewed in TTABVUE by entering the proceeding number, application number, registration number, expungement/reexamination number, mark, party, or correspondent. Many precedential Board decisions that issued from 1996 to 2008 are available through USPTO.gov in the TTAB Reading Room by entering the same information. Most TTAB decisions that issued prior to 1996 are not available in USPTO databases.

function is not ... to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.”).

When a moving party’s motion for summary judgment is supported by evidence sufficient to indicate that there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law, the burden shifts to the non-moving party to demonstrate the existence of at least one genuine dispute as to a material fact that requires resolution at trial. The non-moving party may not rest on the mere allegations of its pleadings and assertions, but must designate specific portions of the record or produce additional evidence showing the existence of a genuine dispute as to a material fact for trial. Consequently, factual assertions without evidentiary support are insufficient to defend against a motion for summary judgment. *See Hornblower & Weeks Inc. v. Hornblower & Weeks Inc.*, Opp. No. 91110043, 2001 WL 1512024, at *8 (TTAB 2001) (“[A]pplicant has produced no evidence, or raised any expectation that at trial it could produce evidence”).

III. The Parties’ Arguments and Evidence

In support of its motion, Opposer submitted the declaration of Andrew J. Avsec, attorney for Opposer (“Avsec Declaration”), who avers as follows.

Opposer served Applicant with Interrogatories, Requests for Admission and Requests for Production on November 10, 2023. Following an agreement to extend Applicant’s deadline to respond to written discovery by 30 days, Applicant provided initial responses to Opposer’s Interrogatories, Requests for Admission and Requests

for Production on January 9, 2024, and supplemental responses on March 15, 2024.¹⁰

Opposer also served a Rule 30(b)(6) Deposition Notice on November 14, 2023, and on April 11, 2024, Opposer conducted the deposition of Applicant's Rule 30(b)(6) witness, Shayan Massoumi.¹¹

Opposer contends that Applicant made numerous admissions during the deposition, including the following:¹²

- Applicant does not manufacture the fruit snacks bearing the mark;¹³
- Applicant does not manufacture the TAKDIS-branded wrappers placed on the fruit products;¹⁴
- Applicant has no agreement with any supplier or other document that specifies any quality control;¹⁵
- Applicant does not know who manufactures the fruit snacks or the wrappers bearing the mark;¹⁶
- Applicant has made no effort to determine who manufactures the TAKDIS snacks;¹⁷

¹⁰ Avsec Decl., 48 TTABVUE 18, ¶ 2, Exs. A-C.

¹¹ *Id.* at ¶ 3, Ex. D.

¹² 48 TTABVUE 5-6, 9-15.

¹³ *Id.* at 18, ¶ 3, Ex. D at 117:23-118:1.

¹⁴ *Id.* at 118:2-9.

¹⁵ *Id.* at 119:1-11, 120:3-6.

¹⁶ *Id.* at 116:11-21.

¹⁷ *Id.* at 179:19-21.

- Applicant does not know which country the products come from, and plays no role in importing them;¹⁸
- Applicant merely purchases the products from multiple third-party suppliers, and Applicant does not know where the third-party suppliers have procured the TAKDIS branded product from;¹⁹
- when the fruit snack products bearing the TAKDIS mark arrive at Applicant's place of business, the mark is already printed on the exterior wrapper of each individual product, and Opposer does not direct, create, or control the production of that wrapper, the placement of the snack in the wrapper, or even know who does it;²⁰
- Applicant has no exclusive distribution agreement and any party can purchase and resell TAKDIS snacks;²¹ and
- no party has assigned or otherwise transferred ownership of the TAKDIS mark to Applicant.²²

Counsel for Opposer also purchased TAKDIS snacks from various third parties and made these third-party products of record during Applicant's deposition.²³ All were nearly the identical product, bearing the identical TAKDIS mark, in the nearly

¹⁸ *Id.* at 120:8-15, 121:23-122:10.

¹⁹ *Id.* at ¶ 8, Ex. H at 97:9-98:7 (filed under seal).

²⁰ *Id.* at 18, ¶ 3, Ex. D at 116:22-118:14.

²¹ *Id.* at 172:15-21.

²² *Id.* at 123:2-12.

²³ *Id.* at 18-19, ¶¶ 3, 7, Exs. D and G.

identical TAKDIS wrapper, but all were purchased from different sources, who like Applicant, appeared to purchase bulk TAKDIS fruit snacks and package the individual snacks into different outer packaging. These third-party fruit snacks are virtually identical to the TAKDIS product and wrappers sold by Applicant.²⁴

Following the Rule 30(b)(6) deposition, Opposer moved to amend its notice of opposition on April 19, 2024 to include a claim that Applicant does not own the TAKDIS mark, and did not own the TAKDIS mark at the time the application was executed and filed.²⁵ The Board granted Opposer's motion to amend on July 17, 2024.²⁶ The parties then conducted discovery on the question of Applicant's purported ownership of the TAKDIS mark. Opposer served its second set of requests for admission, interrogatories, and document requests on August 9, 2024.²⁷ Applicant failed to produce any documents, despite several follow-ups, or provide any evidence to support its claim of ownership.²⁸

Opposer argues that Applicant has not and cannot show that it has any connection to the production of the products or TAKDIS wrappers, that it has exclusive distribution rights, that it created the fruit snacks, or that it is even aware of any of the entities involved in the production, importation and distribution of the TAKDIS products, or that it otherwise acts as the entity that controls the quality of the goods

²⁴ *Id.* at 18, ¶ 3, Ex. D.

²⁵ 40 TTABVUE.

²⁶ 46 TTABVUE.

²⁷ Avsec Decl., 48 TTABVUE 18, ¶ 4.

²⁸ *Id.* at 19, ¶ 6 Ex. F.

produced under the TAKDIS mark.²⁹ Opposer argues that, because Applicant is not the owner of the mark, the application is void ab initio, and summary judgment should be entered sustaining the Opposition.³⁰

Applicant counters that Opposer's motion for summary judgment must be denied because genuine disputes of material fact remain.³¹ In particular, Applicant claims that it has played a role in manufacturing its products and has control over the distribution of its products, as it designed the outer packaging.³² Applicant claims it had been the principal, not a third party's agent or licensee, in having its trademarked goods manufactured and sold, and that it had not given ownership of its mark to any other party.³³ Applicant also argues that it does not act as a distributor to any other third party for those fruit snack products that bear the TAKDIS mark, and that it is not a wholly-owned subsidiary of the entity that

²⁹ 48 TTABVUE 9-15.

³⁰ *Id.*

³¹ 51 TTABVUE 4-6.

³² *Id.*

³³ *Id.* at 5 (citing Ex. H to Avsec Decl. at 88:22-89:12). Applicant also cites to pages 39-40, 60 and 84 of the Rule 30(b)(6) deposition of Shayan Massoumi. However, these pages were not attached to Opposer's motion and Applicant did not provide copies of these pages with its response. Although these pages were attached to Opposer's amended complaint, *see* 40 TTABVUE, an exhibit attached to a pleading is not evidence on behalf of the party to whose pleading the exhibit is attached, and must be identified and introduced in evidence as an exhibit during the period for the taking of testimony. Trademark Rule 2.122(c), 37 C.F.R. § 2.122(c); *See Kellogg Co. v. Pack'Em Enters. Inc.*, Opp. No. 91080586, 1990 WL 354499, at 2014 WL 2531211, at *3 n.9 (TTAB 1990) (materials relied upon as supporting a motion for summary judgment usually must be submitted with the motion). Thus, these portions of Massoumi's testimony are not of record and Applicant's assertions based upon them are unsupported and will not be considered. The Board notes that, even if considered, this evidence would not affect the outcome of this decision.

manufactures the fruit snack products that bear the TAKDIS mark.³⁴ Applicant also claims that Opposer's argument regarding third-party uses of the term TAKDIS is irrelevant as Opposer has not demonstrated that any of these uses predated Applicant's use of the TAKDIS mark, and that there may be infringers of Applicant's mark bears no relevance to the Applicant's ownership of Applicant's mark.³⁵

IV. Analysis

A. Entitlement to a Statutory Cause of Action

Entitlement to a statutory cause of action is a requirement in every inter partes case. *Australian Therapeutic Supplies Pty. Ltd. v. Naked TM, LLC*, 965 F.3d 1370, 1373-76 (Fed. Cir. 2020) (citing *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 125-26 (2014)). To establish an entitlement to bring a statutory cause of action ("entitlement") under Section 13 or 14 of the Trademark Act, a plaintiff must plead, and later prove, a real interest in the proceeding where the opposition or cancellation is within the zone of interests protected by statute, and a reasonable belief in damage that is proximately caused by continued registration of the mark. *Corcamore, LLC v. SFM, LLC*, 978 F.3d 1298, 1303-04 (Fed. Cir. 2020); *see also Empresa Cubana Del Tabaco v. Gen. Cigar Co.*, 753 F.3d 1270, 1275 (Fed. Cir. 2014). The purpose of the requirement to show entitlement in Board proceedings is "to prevent litigation where there is no real controversy between the parties, where a

³⁴ 51 TTABVUE 5 (citing Avsec Decl., 48 TTABVUE 18, ¶ 3, Ex. D at 121:14-17 and 122:6-10).

³⁵ *Id.* at 5.

plaintiff, petitioner or opposer, is no more than an intermeddler.” *Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 1028-29 (CCPA 1982).

In this case, we find no genuine dispute of material fact that Opposer has established its entitlement by properly making of record its pleaded registrations,³⁶ forming the basis of a likelihood of confusion claim under Trademark Act Section 2(d) that is not wholly without merit. *Lipton Indus. Inc.*, 670 F.2d at 1029. In view thereof, we find Opposer has proven its entitlement.³⁷ *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 945 (Fed. Cir. 2000); *Lincoln Nat’l Corp. v. Anderson*, Opp. No. 91192939, 2014 WL 879506, at *3 (TTAB 2014). *See also Lipton Indus, Inc.*, 670 F.2d at 1029. Applicant has not contested Opposer’s entitlement to a statutory cause of action.

B. Non-ownership

Trademark Act Section 1(a)(1), 15 U.S.C. § 1051(a)(1), provides:

³⁶ Opposer made its pleaded registrations of record by attaching copies of them obtained from the USPTO TSDR database to the notice of opposition. *See Prosper Bus. Dev. Corp. v. IBM*, Opp. No. 91212472, 2014 WL 7496060, at *5 n.11 (TTAB 2014) (registrations attached to original pleading are of record even if pleading is later amended without attaching the registrations to the amended pleading); *see also* TBMP § 704.03(b)(1)(A) (“A federal registration owned by the plaintiff in an opposition or cancellation proceeding, and pleaded by the plaintiff in its complaint, will be received in evidence and made part of the record in the proceeding if the complaint (either as originally filed or as amended) is accompanied by (a) an original or a photocopy of the registration prepared and issued by the Office showing both the current status of and current title to the registration; or (b) a current copy, printout, or screenshot of information from the electronic database records of the Office from TSDR showing the current status and title (owner) of the registration....”).

³⁷ Where a plaintiff has sufficiently alleged an entitlement to a statutory cause of action as to at least one properly pleaded ground, its allegation permits it to pursue any other legally sufficient ground. *See, e.g., Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1377 (Fed. Cir. 2012) (“[O]nce an opposer meets the requirements for standing, it can rely on any of the statutory grounds for opposition set forth in 15 U.S.C. § 1052.”); *Petróleos Mexicanos v. Intermix S.A.*, Can. No. 92052292, 2010 WL 5574284, at *2 (TTAB 2010).

The owner of a trademark used in commerce may request registration of its trademark on the principal register by paying the prescribed fee and filing in the Patent and Trademark Office an application and a verified statement ...

Thus, “[u]nder Section 1 of the Trademark Act, only the owner of a mark is entitled to apply for registration.” *Sock It To Me, Inc. v. Fan*, Opp. No. 91230554, 2020 WL 3027605, at *2 (TTAB 2020) (quoting *In re Pharmacia Inc.*, Ser. No. 73523579, 1987 WL 123832, at *1 (TTAB 1987)). A use-based application filed by a person who does not own the mark at the time of filing is void ab initio. *Huang v. Tzu Wei Chen Food Co.*, 849 F.2d 1458, 1460 (Fed. Cir. 1988) (affirming Board’s holding that an application was void ab initio because the applicant was not the owner of the mark on the filing date). The owner of a mark is the entity that controls the nature and quality of the goods or services sold under the mark. *See In re Wella A.G.*, 787 F.2d 1549, 1554 (Fed. Cir. 1986) (C.J. Nies concurring) (“the one entity which controls the nature and quality of the goods sold under the mark is the owner.”); *see generally Noble House Home Furnishings, LLC v. Floorco Enters., LLC*, Can. No. 92057394, 2016 WL 3357265, at *10-11 (TTAB 2016).

“Generally, the mere fact that a U.S. distributor distributes a foreign manufacturer’s branded product does not, without more, give the U.S. distributor an ownership interest in the mark.” *Nahshin v. Prod. Source Int’l, LLC*, Can. No. 92051140, 2013 WL 6040375, at *7 (TTAB 2013); *see also Roger & Gallet v. Janmarie, Inc.*, 245 F.2d 505, 510 (CCPA 1957) (As between a French manufacturer and its U.S. distributor, “the owner, until such time as he chose to part with his United States rights, was unquestionably the French manufacturer, located in France.”). Merely

repackaging a third-party's goods with a new label bearing the third-party's mark does not give rise to ownership of the third-party's mark. *See Audioson Vertriebs – GmbH v. Kirksaeter Audiosonics, Inc.*, Can. No. 92010726, 1977 WL 22588, at *6 (TTAB 1977) (new label affixed by distributor of Petitioner's goods "was not an indication of origin of the goods in the importer").

A U.S. distributor for a foreign manufacturer may register a mark only if the applicant submits one of the following:

- (a) written consent from the owner of the mark to registration in the applicant's name, or
- (b) written agreement or acknowledgment between the parties that the importer or distributor is the owner of the mark in the United States, or
- (c) an assignment (or true copy) to the applicant of the owner's rights in the mark as to the United States together with the business and good will appurtenant thereto.

Fuji Med. Instruments Mfg. Co., Ltd. v. Am. Crocodile Int'l Group, Inc., 2021 WL 3286400, at *12 (TTAB 2021) (citing TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 1201.06(a) (Oct. 2018)); *In re Pharmacia Inc.*, 1987 WL 123832, at *2 (applicant must submit an assignment or other written consent from the owner of the mark in order to demonstrate applicant's ownership of the mark in the United States).

Here, it is undisputed that the goods bearing the TAKDIS mark are foreign-produced and are not manufactured by Applicant or otherwise sold pursuant to any agreement with the manufacturer.³⁸ Furthermore, Applicant has not entered into any

³⁸ Avsec Decl., 48 TTABVUE 18, ¶ 3, Ex. D at 117:23-118:1 ("Q Shirin Foods does not manufacture the fruit snack/bar or the fruit layer that bears the Takdis mark, does it? A No,

agreement or otherwise received permission from the manufacturer to register the TAKDIS mark.³⁹ Rather, Applicant merely purchases the TAKDIS-branded goods from third-party suppliers.⁴⁰ While Applicant represents that it repackages the goods in its own packaging,⁴¹ this packaging merely displays the TAKDIS mark that already appears on the goods as purchased from the third-party distributors, and this does not create ownership rights. *See Audioson*, 1977 WL 22588, at *6.

Applicant claims that it had directed suppliers to obtain Applicant's products with the TAKDIS mark printed on it, designed the wrappers and labels for Applicant's products with the mark on it, and then controlled the sale of those goods in commerce, and that these factors create a genuine dispute of material fact.⁴² We disagree. Contrary to Applicant's assertions, Applicant does not acquire an ownership interest

we do not manufacture them."); 119:1-11 ("Q Any kind of contract or agreement between you and any of – 'you' meaning Shirin Foods and any of those suppliers that we talked about. A No, not that I recall. Q Do you know whether there's any written distribution agreement -- regardless of who the parties to the agreement might be, do you know whether there's any written distribution agreement for those fruit snack products that bear the Takdis mark? A No."); 120:3-6 ("Do you know whether or not there exists a supply agreement that pertains to the fruit snack products that bear the Takdis mark? A I don't think there is, no. I don't believe so, no.").

³⁹ *Id.* at 123:2-12 ("Q Has any person or entity entered into an agreement with Shirin Foods stating that Shirin Foods owns the Takdis mark in the U.S.? A No. Q Any person or entity entered into an agreement with Shirin Foods stating that Shirin Foods owns the Takdis mark in any jurisdiction? A No. Q Has any person or entity assigned the Takdis mark to Shirin Foods? A No. ... Q Is there any agreement whereby Shirin Foods was given the right to distribute the fruit snacks bearing the Takdis mark in the U.S. or anywhere else? A No. Q Is it Shirin Foods' position that it acquired ownership of the Takdis mark from another party? A Acquired ownership? No.").

⁴⁰ *Id.* at 19, ¶ 8, Ex. H at 97:9-98:7 (filed under seal).

⁴¹ *See* 51 TTABVUE 4-5. As noted *supra* at fn. 33, Applicant did not submit the Rule 30(b)(6) deposition pages 60 and 84 supporting this assertion referenced in its brief.

⁴² 51 TTABVUE 5-6.

in the TAKDIS mark merely by purchasing goods already bearing the mark and reselling them in packaging it designs featuring the mark. “[I]n the absence of any [distribution] agreement, there is the legal presumption that the manufacturer is the owner of the mark.” *Audioson*, 1977 WL 22588 at *4. Under *Audioson*, Applicant’s mere purchase of the goods bearing the TAKDIS mark does not give it a right to register the mark, and the presumption of ownership remains with the manufacturer. Applicant has failed to come forward with any other evidence to rebut this presumption.

Opposer’s motion for summary judgment is supported by evidence sufficient to establish that there is no genuine dispute as to any material fact regarding Opposer’s non-ownership claim and that Opposer is entitled to judgment as a matter of law. Furthermore, Applicant has provided no evidence in response that demonstrates the existence of any genuine dispute as to a material fact that requires resolution at trial. As a result, Applicant’s application to register the mark is void ab initio, and Opposer’s motion for summary judgment on its non-ownership claim is **granted**. Having found that Opposer is entitled to summary judgment on the issue of non-ownership, we need not and do not reach Opposer’s claims of likelihood of confusion and dilution.

Judgment is hereby entered against Applicant, the opposition is sustained, and registration to Applicant is refused.