

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed: June 24, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

*Retrobrands USA LLC*

*v.*

*Data Access Sarl*

Opposition No. 91283839

Retrobrands USA LLC, *pro se*.<sup>1</sup>

Michael Culver of Millen, White, Zelano & Branigan, P.C. for Data Access Sarl.

Before Allard, Cohen and Casagrande,  
Administrative Trademark Judges.

Opinion by Cohen, Administrative Trademark Judge:

Applicant, Data Access Sarl, seeks a Principal Register registration for HELENE CURTIS for “bar soap, perfumed soaps; perfumery products; essential oils; cosmetics; hair lotions; dentifrices; shampoos; talcum powder; toilet water; cosmetic bath preparations; toilet water containing oil for toilet purposes; sunscreen products, namely, sunscreen preparations; cotton buds for cosmetic purposes; toilet milks;

<sup>1</sup> Documents were filed by Jeffrey Kaplan identified as its founder, sole owner, and managing member.

tissues impregnated with cosmetic lotions; toilet milk, for personal cleansing purposes; bath salts not for medical use; eau de cologne; oils for cosmetic use; almond milk for cosmetic use; cotton wadding for cosmetic use; pomades for cosmetic use” in International Class 3.<sup>2</sup>

Opposer, Retrobrands USA LLC, opposes the Application alleging in its operative notice of opposition<sup>3</sup> asserting a single claim: that when the Application was filed Applicant did not have a bona fide intent to use its mark in commerce in connection with all the goods identified.

Applicant denies the salient allegations in its answer to the operative notice of opposition.<sup>4</sup> For the reasons discussed below, we dismiss the opposition.

## **I. The Record**

The record consists of the pleadings, and, by operation of Trademark Rule 2.122(b), 37 C.F.R. § 2.122(b), the file of the Application. The parties also introduced additional evidence and testimony which we do not list here. Nonetheless, the entire record has been carefully considered, and relevant evidence is discussed throughout this opinion. *See Quiktrip W., Inc. v. Weigel Stores, Inc.*, 984 F.3d 1031, 1036 (Fed.

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<sup>2</sup> Application Serial No. 79326562 (the “Application”) was filed on July 2, 2021 under Section 66(a) of the Trademark Act, 15 U.S.C. § 1141f(a), based on a request for extension of protection to the United States of International Registration No. 1628324 which issued on July 2, 2021 with a claimed priority date of January 12, 2021. There are no allegations of use.

<sup>3</sup> 17 TTABVUE (Second Amended Notice of Opposition); *see* 23 TTABVUE 2 (recognizing the Second Amended Notice of Opposition at 17 TTABVUE as Opposer’s operative pleading).

Citations to the appeal record are to TTABVUE, the Board’s online docketing system. *See, e.g., Turdin v. Trilobite, Ltd.*, No. 94002505, 2014 WL 343270, at \*2 n.6 (TTAB 2014).

<sup>4</sup> 18 TTABVUE.

Cir. 2021) (Board not obliged to expressly discuss every piece of evidence); *In re Miracle Tuesday LLC*, 695 F.3d 1339, 1348 (Fed. Cir. 2012) (“[T]he mere fact that the Board did not recite all of the evidence it considered does not mean the evidence was not, in fact, reviewed.”); *Plant Genetic Sys., N.V. v. DeKalb Genetics Corp.*, 315 F.3d 1335, 1343 (Fed. Cir. 2003) (“We presume that a fact finder reviews all the evidence presented unless he explicitly expresses otherwise.”); *Newhouse v. Nicholson*, 497 F.3d 1298, 1302 (Fed. Cir. 2007) (“The fact that [a particular piece of evidence] was not specifically mentioned in the Board’s decision in this case is insufficient to overcome this presumption [that the Board reviewed all the evidence in the record].”).

## **II. Entitlement to a Statutory Cause of Action**

An opposer in an opposition proceeding before the Board must prove its entitlement to a statutory cause of action. *Australian Therapeutic Supplies Pty. Ltd. v. Naked TM, LLC*, 965 F.3d 1370, 1372 (Fed. Cir. 2020); *see also Luca McDermott Catena Gift Tr. v. Fructuoso-Hobbs SL*, 102 F.4th 1314, 1325 (Fed. Cir. 2024); *Empresa Cubana Del Tabaco v. Gen. Cigar Co.*, 753 F.3d 1270, 1274 (Fed. Cir. 2014). To establish its entitlement, Opposer must demonstrate: (1) that its claim falls within the zone of interests protected by the statute (i.e., it has a “real interest” in the outcome of the proceeding); and (2) damage proximately caused by the proposed registration (i.e., a reasonable basis for its belief in damage). *See Curtin v. United Trademark Holdings, Inc.*, 137 F.4th 1359, 1367 (Fed. Cir. 2025); *Corcamore, LLC v. SFM, LLC*, 978 F.3d 1298, 1303-07 (Fed. Cir. 2020); *Australian Therapeutic Supplies*, 965 F.3d at 1373-74; *Empresa*, 753 F.3d at 1275.

Opposer argues that the Board, in its order on the motion for summary judgment, “stipulated to Opposers [sic] standing to maintain this opposition.”<sup>5</sup> Applicant disputes this characterization of the Board’s order.<sup>6</sup> We agree with Applicant that there was no stipulation; the Board clearly stated that “Opposer’s motion is ... denied on this basis alone[.]”<sup>7</sup> and that it only continued with its analysis “in the interest of completeness.”<sup>8</sup> Regardless, on the record before us, we find that Opposer has established its entitlement to bring this statutory cause of action.

Opposer’s founder, owner and managing member, Jeffrey Kaplan, testifies that as part of his regular business practice, “[b]efore April 2nd 2021 [he] prepared a detailed HELENE CURTIS brand guide which outlined [his] **bona fide plans** to launch a new HELENE CURTIS product line”<sup>9</sup> (emphasis in original). Opposer also submitted testimony and evidence of its pending trademark application<sup>10</sup> for HELENE CURTIS for “hair shampoo” and an Office Action refusing registration of it based on a likelihood of confusion with the mark of the Application.<sup>11</sup>

This uncontroverted testimony establishes that Opposer has a real interest and reasonable belief of damage from registration of the mark in the Application entitlement to bring this opposition. *See, e.g., Books on Tape, Inc. v. Booktape Corp.,*

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<sup>5</sup> 29 TTABVUE 12.

<sup>6</sup> 30 TTABVUE 5.

<sup>7</sup> 23 TTABVUE 4-5.

<sup>8</sup> *Id.* at 5.

<sup>9</sup> 25 TTABVUE 3, ¶¶4-5; *id.* at 12-19.

<sup>10</sup> 25 TTABVUE 3, ¶¶6-7; *id.* at 21-25.

<sup>11</sup> *Id.* 4, ¶¶8-9; *id.* at 28.

836 F.2d 519, 520 (Fed. Cir. 1987) (finding competitor has an interest in the outcome of the proceedings beyond that of the general public); *Hole In 1 Drinks, Inc. v. Lajtay*, No. 92065860, 2020 WL 859853, at \*4 (TTAB 2020) (evidence that Respondent's registration cited as a bar to registering Petitioner's application establishes entitlement); *TPI Holdings, Inc. v. TrailerTrader.com, LLC*, No. 92064976, 2018 WL 1942229, at \*3 (TTAB 2018) (entitlement based alone on ownership of an intent-to-use application what was refused registration because of involved registration).

### **III. Bona Fide Intent to Use**

We turn now to Opposer's claim that Applicant lacked a bona fide intent to use the HELENE CURTIS mark in commerce for the goods identified in the Application at the time it was filed.

By filing its application under Trademark Act Section 66(a) and requesting an extension of protection to the United States based on a foreign application, the Application included a declaration of bona fide intention to use the mark in commerce. 15 U.S.C. § 1141f(a). Whether Applicant had a bona fide intention to use the mark in commerce when it filed its Application is an objective determination evaluated "on a case-by-case basis considering the totality of the circumstances." *M.Z. Berger & Co. v. Swatch AG*, 787 F.3d 1368, 1376 (Fed. Cir. 2015); see *Tiger Lily Ventures Ltd. v. Barclays Cap. Inc.*, 35 F.4th 1352, 1365 (Fed. Cir. 2022); *Lane Ltd. v. Jackson Int'l Trading Co.*, No. 92092025, 1994 WL 740491, at \*6 (TTAB 1994) ("the determination of whether an applicant has a bona fide intention to use the mark in commerce is to be a fair, objective determination based on all the circumstances").

“Although the evidentiary bar is not high, the circumstances must indicate that the applicant’s intent to use the mark was firm and not merely intent to reserve a right in the mark.” *M.Z. Berger*, 787 F.3d at 1376; *see Tiger Lily Ventures*, 35 F.4th at 1365.

“Opposer has the initial burden of demonstrating by a preponderance of the evidence that applicant lacked a bona fide intent to use the mark on the identified goods [on the filing date of its application].” *Boston Red Sox Baseball Club LP v. Sherman*, No. 91172268, 2008 WL 4149008, at \*6 (TTAB 2008). “The absence of any documentary evidence on the part of an applicant regarding such intent constitutes objective proof sufficient to prove that the applicant lacks a bona fide intention to its use its mark in commerce.” *Id.* (citing *Commodore Elecs. Ltd. v. CBM Kabushiki Kaisha*, No. 91086336, 1993 WL 156479, at \*4 (TTAB 1993)). If an opposer establishes a prima facie case, the burden shifts to the applicant to rebut that prima facie case by producing evidence which would establish that it had the requisite bona fide intent to use the mark when it filed its application. *See Saul Zaentz Co. v. Bumb*, No. 91156452, 2010 WL 2783892, at \*4 (TTAB 2010); *Boston Red Sox Baseball Club*, 2008 WL 4149008, at \*6.

As an initial matter, in its trial brief, Opposer defines Applicant’s goods as including those originally<sup>12</sup> included (but later deleted during prosecution of the

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<sup>12</sup> The original identification of goods for the Application is (deleted goods appear in brackets):

bar soap, perfumed soaps; perfumery products; essential oils; cosmetics; hair lotions; dentifrices; shampoos; talcum powder; toilet water; cosmetic bath preparations; toilet water containing oil for toilet purposes; sunscreen products, namely, sunscreen preparations; cotton buds for cosmetic purposes; toilet milks; tissues impregnated with cosmetic lotions; toilet milk, for cleansing purposes; tissues impregnated with cosmetic lotions; bath salts not for medical use; eau de cologne; oils for cosmetic use; almond milk for cosmetic use; cotton wadding for cosmetic use; pomades for cosmetic use; [polishing

Application) in the identification of goods in the Application.<sup>13</sup> Opposer argues as evidence of Applicant's lack of bona fide intent that "the Application covers International Class 003 and includes more than 100 individual goods."<sup>14</sup> We note, however, that in its reply brief, Opposer refers to the identification of goods in the Application as an "assorted 20 plus product line"<sup>15</sup> in an apparent acknowledgement that the identification of goods in the Application does not contain the deleted goods.

Opposer argues that Applicant "failed to take the most basic steps that would indicate a true intent to use the Mark in connection with even one, let alone all 100-plus products set forth in the Application."<sup>16</sup> In support, Opposer relies on Applicant's responses to Opposer's discovery requests<sup>17</sup> wherein Applicant acknowledges that as

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wax, namely wood waxes; waxes, namely, parquet and polish waxes; polish, namely, furniture and flooring polish; bleaching preparations and laundry additives for water softening and detergent for laundry use; washing and cleaning products; preparations for cleaning, polishing, scouring, and shining surfaces, namely, wood, metal, leather, floor coverings, tiles, marble, fabrics and furniture; paint-stripping products, namely, paint stripping preparations; scouring solutions; stain removers; scale removing preparations for household use; nonmedicated soaps; rust removing preparations, namely, anti-rust products for rust removal; oils for cleaning purposes; polishing stones; preparations for unblocking drain pipes; glass cleaners; shoe wax; cleaning and polishing preparations for leather and footwear; leather polishes for preservation; creams for leather; creams for footwear; nourishing creams for footwear; shoe polishes and creams, namely, liquid polishing wax, shampoo for footwear; cloths impregnated with cleaning preparations; disposable wipes impregnated with cleaning chemicals or compounds for industrial and commercial use; waxes, namely, shoe wax in the form of sprays; cleaning spray in the form of aerosol cans for footwear; cleaning preparations for shoes, namely, pastes for cleaning of footwear].

<sup>13</sup> 29 TTABVUE 7-8; *see* January 25, 2023 Post Publication Amendment at TSDR 1; February 22, 2023 Amendment at TSDR 1.

<sup>14</sup> 29 TTABVUE 13.

<sup>15</sup> 31 TTABVUE 5.

<sup>16</sup> 29 TTABVUE 8.

<sup>17</sup> Applicant's responses to Opposer's Requests for Admission include denials. *See* 25 TTABVUE 104-07. We consider only Applicant's admissions because denials to requests for

of the filing date of the Application, it has entered into no contracts with potential distributors,<sup>18</sup> sales brokers,<sup>19</sup> manufacturers,<sup>20</sup> and retailers in relation to its identified goods;<sup>21</sup> has had no communications<sup>22</sup> or entered into any contracts<sup>23</sup> with potential tradeshow or convention representatives to exhibit and display Applicant's goods;<sup>24</sup> has not obtained or created label designs for Applicant's goods;<sup>25</sup> has not obtained, created or reserved a webpage URL to sell Applicant's goods in the U.S.;<sup>26</sup> has not obtained, reserved, selected, adopted or registered names for social media

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admission cannot be submitted under notice of reliance. *See* Trademark Rule 2.120(k)(3)(i), 37 C.F.R. § 2.120(k)(3)(i); *Life Zone v. Middleman Grp. Inc.*, No. 91160999, 2008 WL 2781162, at \*3 n.10 (TTAB 2008) (denials of requests for admission not admissible; the denial of a request for admission establishes neither the truth nor the falsity of the assertion, but rather leaves the matter for proof at trial). Opposer also submitted Applicant's responses to Opposer's requests for documents. *See* 25 TTABVUE 86-92. Responses to a request for production of documents introduced through a notice of reliance are admissible solely for purposes of showing that a party has stated that there are no responsive documents. Trademark Rule 2.120(j)(3)(ii), 37 C.F.R. § 2.120(j)(3)(ii); *see also City Nat'l Bank v. OPGI Mgmt. GP Inc./Gestion OPGI Inc.*, No. 92050730, 2013 WL 3168094, at \*6 n.10 (TTAB 2013) (responses to document production requests are admissible solely for purposes of showing that a party has stated that there are no responsive documents).

<sup>18</sup> Interrogatory No. 7, 25 TTABVUE 97 (Applicant responds that it "contacted Liya Chen at the company Terrake ... with whom Applicant previously worked ... Applicant's further steps have been curtailed by this opposition"); *cf. Penthouse Int'l, Ltd. v. Dyn Elecs., Inc.*, 1977 WL 22568, at \*5 (TTAB 1977) ("Moreover, nonuse of a mark pending the outcome of litigation to determine the right to such use or pending the outcome of a party's protest to such use constitutes excusable nonuse sufficient to overcome any inference of abandonment."). *See also* Request for Admission No. 3, *id.* at 104.

<sup>19</sup> Request for Admission No. 5, *id.* at 105.

<sup>20</sup> Interrogatory No. 12, *id.* at 98; Request for Admission No. 7, *id.*

<sup>21</sup> Request for Admission No. 9, *id.* at 105.

<sup>22</sup> Request for Admission No. 10, *id.* at 106.

<sup>23</sup> Request for Admission No. 11, *id.* at 106.

<sup>24</sup> Interrogatory No. 13, *id.* at 98-99.

<sup>25</sup> Interrogatory No. 11, *id.* at 98; Request for Admission No. 12, *id.* at 106.

<sup>26</sup> Request for Admission No. 14, *id.* at 106.



profiles, handles, pages, and/or accounts that incorporate the involved mark;<sup>27</sup> and has not obtained or created a detailed business plan to sell Applicant's goods in the U.S. as of the filing date of the Application.<sup>28</sup>

Although Applicant's discovery responses indicate that any further steps and plans it has for the HELENE CURTIS mark have been "curtailed by this opposition,"<sup>29</sup> we find that in view of these discovery responses, Opposer has met its initial burden of a prima facie showing that as of the filing date of the Application, Applicant did not have a bona fide intent to use the HELENE CURTIS mark in commerce that may lawfully be regulated by Congress for the goods currently identified in the Application.

Because Opposer has made a prima facie showing that Applicant lacked a bona fide intent to use its mark in U.S. commerce, the burden shifts to Applicant to produce evidence that establishes that it had the requisite bona fide intent to use its mark when it filed its Application. Applicant submits the testimony and attached exhibits of its President, Julien Clairet<sup>30</sup> and of Liya Chen, an employee of Terrake, "a company marketing products in the field of cosmetics."<sup>31</sup>

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<sup>27</sup> Request for Admission No. 15, *id.*

<sup>28</sup> Request for Admission No 16, *id.* at 106-07. Applicant admits it does not have a detailed business plan but responds that it "believes such is unnecessary in view of Applicant's prior experience." *Id.* at 107.

<sup>29</sup> *See, e.g.*, Interrogatory Nos. 7-9, 25 TTABVUE 97-98.

<sup>30</sup> 26 TTABVUE.

<sup>31</sup> 27 TTABVUE 2.

Mr. Clairet testifies, among other things, that Applicant “is in the business of researching and reviving previous brand names that are dormant or otherwise not in use”;<sup>32</sup> and that it has experience in developing cosmetic brands, including the brand LE GALION for perfumes which Applicant developed “in or about 2012”<sup>33</sup> and sold to a French company which now has a USPTO registration for the mark.<sup>34</sup> Mr. Clairet attaches a copy of printout from the website LEGALION.COM.FR which reads “More than 30 years later, like a phoenix, the Perfume House Le Galion is reborn from its ashes” which Mr. Clairet says is a nod to Applicant’s efforts to revive the brand.<sup>35</sup> “[I]n 2019, ... after 15 years working on the brand FORVIL, Applicant sold the brand to a Chinese company now using it in Europe and China.”<sup>36</sup> Mr. Clairet attaches a webpage from FORVIL.COM which he testifies displays a cosmetic product and is produced by “Forvil—Group Terrake.”<sup>37</sup>

Mr. Clairet further testifies that he contacted Liya Chen of Terrake, “a subsidiary of the Chinese group which previously purchased from Applicant the brand FORVIL

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<sup>32</sup> 26 TTABVUE 2, ¶2.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 58-61.

<sup>35</sup> *Id.* at 2-3, ¶3; *id.* at 56.

<sup>36</sup> *Id.* at 3, ¶4; *id.* at 63-64.

<sup>37</sup> *Id.* at 3, ¶4. The webpage contains a mix of French and English. *See* TBMP § 104 (“Board proceedings are conducted in English. If a party intends to rely upon any submissions that are in a language other than English, the party should also file a translation of the submissions. If a translation is not filed, the submissions may not be considered.”). While the probative value may be somewhat lessened by the presence of some untranslated French, we cannot say the webpage evidence is unintelligible as a whole or lacking in probative value merely based on the presence of foreign wording. From what we can discern, it appears a bottle of shampoo is displayed.

... with whom Applicant had previously worked in connection with cosmetic products, to consider potential distribution, sale brokering, manufacture and/or retailing for the brand HELENE CURTIS. Terrake is a company involved in cosmetics and body cleaners.”<sup>38</sup> On January 25, 2021, about ten months before the Application was filed, he emailed Ms. Chen the results of his research into the brand, which included references to HELENE CURTIS in the U.S. as well as Canada and China,<sup>39</sup> but no collaboration resulted.<sup>40</sup> Mr. Clairret also testifies that in July 2022, about eight months after the application was filed, he emailed Tran Quoc Chung who lives in France and “controls Passions Perfect, a company dealing in luxury branded goods. He showed some interest in my pitch to develop the HELENE CURTIS brand, but the dialogue unexpectedly ended on his part and nothing came of the correspondence.”<sup>41</sup>

Ms. Chen’s testimony corroborates Mr. Clairret’s statements. She testifies that she previously worked with Mr. Clairret in connection with cosmetic products including the brand FORVIL;<sup>42</sup> that she received Mr. Clairret’s January 25, 2021 email “discussing various brand names for cosmetic products, including the brand HELENE CURTIS”<sup>43</sup> and understood Mr. Clairret was looking for a “collaborative

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<sup>38</sup> *Id.* at ¶5.

<sup>39</sup> *Id.* at 69.

<sup>40</sup> *Id.* at 3.

<sup>41</sup> *Id.* at ¶6.

<sup>42</sup> 27 TTABVUE 2, ¶2.

<sup>43</sup> *Id.* at ¶1.

effort to develop the brand, including in the United States”<sup>44</sup> but that a few days later, she was hospitalized in a coma.<sup>45</sup> She continues that on December 27, 2023, “[s]till remembering Mr. Clairet’s proposal ... I emailed a colleague, Mr. Zhang, who works in China in the cosmetic field regarding development of the HELENE CURTIS brand, but nothing developed from the communication.”<sup>46</sup>

Opposer argues that this testimony and evidence is irrelevant because its “foreign based emails and registrations by foreign based unrelated third parties and foreign-country-based business experiences ... these materials do not support Applicant’s claim to own and register the HELENE CURTIS mark in the United States.”<sup>47</sup>

A party’s showing of use of other marks for similar goods outside the United States may be probative of its capacity to market and manufacture the identified goods within the United States. *See Wet Seal*, 2007 WL 458529, at \*14 (finding applicant’s capacity to market and/or manufacture goods produced in the past under different marks rebuts a claim that applicant lacked a bona fide intent to use); *Rolex Watch U.S.A. Inc. v. AFP Imaging Corp.*, No. 91188993, 2011 WL 6780738, at \*12 (TTAB 2011) (applicant had capacity to market and manufacture goods listed in its application for ROLL-X mark, which is consistent with an extension of applicant’s current DENT-X product line), *judgment vacated as moot*, 2013 WL 4397049 (TTAB 2013). Moreover, it is common knowledge that goods such as those involved here are

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<sup>44</sup> *Id.* at ¶2.

<sup>45</sup> *Id.* at ¶3.

<sup>46</sup> *Id.* at 3, ¶4.

<sup>47</sup> 31 TTABVUE 4.

often manufactured abroad (which is often considered a desirable feature, e.g., French perfume) and then sold in the U.S. to the U.S. customer. Despite Opposer's suggestion to the contrary, there is no requirement that Applicant's efforts to manufacture or obtain its product and to package and market it need to be limited to United States people and entities.

We have carefully considered the parties' arguments and evidence pertaining to Applicant's intent to use HELENE CURTIS in the United States for the identified goods. We find that Applicant's testimony and evidence constitutes credible, objective corroboration of its statement in the Application that it had a bona fide intention to use HELENE CURTIS in commerce on the goods as of the filing date of the Application. *See Commodore Elecs. Ltd.*, 1993 WL 156479, at \*4 (finding applicant's evidence regarding its capacity to produce or market the applied-for goods is "an indication that applicant has been acting in good faith since it tends to show that applicant is actually engaged in the trade for many of the ... goods listed in its intent-to-use application...."). Contemporaneous with the filing of the Application, Applicant contacted Liya Chen of Terrake and Tran Quoc Chung of Passions Perfect in an attempt to secure the manufacture and distribution of goods with the HELENE CURTIS mark. *See Lane Ltd.*, 1994 WL 740491, at \*7 (correspondence occurring nine to eleven months after the filing date found sufficiently contemporaneous to the application filing date "to serve as corroboration of the applicant's declaration in the application of a bona fide intention to use the mark in commerce."). Just because Applicant may not have actually launched or introduced a particular product does

not mean that Applicant otherwise had (or has) no intention to develop or market the product. We find it entirely reasonable that an intent-to-use applicant such as Applicant might proceed cautiously before launching its business of reviving what it believes to be a defunct, non-operational brand.

It is clear from Mr. Clairot's testimony that Applicant has both the capacity to market and/or manufacture perfumes and cosmetic-type products, having produced them in the past under different marks. Although Applicant does not have a detailed business plan for HELENE CURTIS, given its experience with reviving brands and in the cosmetic industry, Applicant's assertion that it "believes such [a detailed plan] is unnecessary in view of Applicant's prior experience"<sup>48</sup> is reasonable. The evidence of Applicant's capacity to market the identified goods affirmatively rebuts any claim by Opposer regarding Applicant's intent. *See Wet Seal, Inc.*, 2007 WL 458529, at \*14 (an applicant's capacity to market and/or manufacture the identified goods is evidence that weighs against a finding that an applicant lacked bona fide intent to use).

Additionally, Applicant has shown it has taken steps, albeit small ones, to secure business relationships for the manufacture and production of cosmetics under the name HELENE CURTIS sufficiently contemporaneous with the filing dates of its Application. As noted, the Board evaluates an applicant's bona fide intent on a "on a case-by-case basis considering the totality of the circumstances." *M.Z. Berger*, 787 F.3d at 1376. What we have here is an applicant that, prior to taking the above-

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<sup>48</sup> Request for Admission No. 16, 25 TTABVue 106-07.

described steps and filing the Application, had experience in creating and reviving brands as well as developing and running a business in the cosmetics industry. Applicant reached out to its contact at Terrake, with whom it had previously worked, to see if they would like to work on this new business; filed its Application; and contacted another business for a potential relationship involving the HELENE CURTIS mark. While these efforts have not yet borne fruit, we think that Applicant's testimony and related documentary evidence supports a finding that it had the requisite bona fide intent to use HELENE CURTIS on the relevant goods as of the filing date of the Application.

#### **IV. Conclusion**

Applicant's evidence as a whole is sufficient to rebut Opposer's prima facie showing. In sum, we find that upon filing the Application, Applicant had the requisite bona fide intent to use HELENE CURTIS in commerce in connection with the identified goods, i.e., "bar soap, perfumed soaps; perfumery products; essential oils; cosmetics; hair lotions; dentifrices; shampoos; talcum powder; toilet water; cosmetic bath preparations; toilet water containing oil for toilet purposes; sunscreen products, namely, sunscreen preparations; cotton buds for cosmetic purposes; toilet milks; tissues impregnated with cosmetic lotions; toilet milk, for personal cleansing purposes; bath salts not for medical use; eau de cologne; oils for cosmetic use; almond milk for cosmetic use; cotton wadding for cosmetic use; pomades for cosmetic use."

**Decision:** The opposition is dismissed.