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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Waldencast UK Limited

v.

Oretia LLC

Opposition No. 91286541

Jovan Jovanovic of The Watson IP Group, PLC
for Waldencast UK Limited.

Alireza Rahimi of Oretia LLC, pro se.

Before Goodman, Myles, and O'Connor,
Administrative Trademark Judges.

Opinion by Myles, Administrative Trademark Judge:

Oretia LLC ("Applicant") seeks registration of the standard character mark COATER on the Principal Register for the following goods in International Class 3: "Skin and body topical lotions, creams and oils for cosmetic use; Skin care products, namely, non-medicated skin serum; Skin clarifiers; Skin cleanser in liquid spray form for use as a baby wipe alternative; Skin cleansers; Skin cleansing cream; Skin

cleansing lotion; Skin conditioners; Skin conditioning creams for cosmetic purposes; Skin cream; Skin creams; Skin emollients; Skin lighteners; Skin lotion; Skin lotions; Skin moisturizer; Skin moisturizer masks; Skin moisturizers used as cosmetics; Skin softeners; Skin texturizers; Skin toners; Skin whitening creams; Topical skin sprays for cosmetic purposes."[1]

Waldencast UK Limited ("Opposer") filed a notice of opposition opposing registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark, when used in connection with Applicant's goods, so resembles Opposer's previously registered standard character mark COATS, on the Principal Register, for "Non-medicated cosmetics" in International Class 3,[2] as to be likely to cause confusion or to cause mistake or to deceive.

In setting aside a notice of default, the Board construed Applicant's answer as a general denial of the allegations in the notice of opposition.[3]

For the reasons discussed below, we dismiss the opposition for Opposer's failure to prove its entitlement to a statutory cause of action or priority.

[1] Application Serial No. 97293341, filed March 3, 2022, pursuant to Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), claiming February 2, 2022 as both the date of first use anywhere and the date of first use in commerce.

[2] Registration No. 6554666, issued November 9, 2021, based on foreign Registration No. UK00003576537 (UK) under Trademark Act Section 44(e), 15 U.S.C. § 1126(e).

[3] 8 TTABVUE 1. Citations to the record in this opinion are to TTABVUE, the Board's online docketing system. The number preceding TTABVUE corresponds to the docket entry number, and any numbers following TTABVUE refer to the page(s) of the docket entry where the cited materials appear.

I. The Record

The record includes the pleadings and, by operation of Trademark Rule 2.122(b), 37 C.F.R. § 2.122(b), the file of the subject application.

Neither party submitted any testimony or other evidence during its assigned testimony period.[4] Only Opposer filed a brief on the case.[5] Even though Applicant filed no testimony, evidence, or a brief, Opposer, as plaintiff in this proceeding, must nonetheless prove its entitlement to a statutory cause of action, priority and likelihood of confusion by a preponderance of the evidence. *See Weider Publn's, LLC v. D & D Beauty Care Co., LLC*, Opp. No. 91199352, 2014 WL 343269, at *5, 8 (TTAB 2014).

Although Opposer did not submit any evidence or testimony, Opposer attached a copy of its pleaded registration to its notice of opposition. Trademark Rule 2.122(d)(1), 37 C.F.R. § 2.122(d)(1), provides that an opposer may make a pleaded registration of record by attaching to the notice of opposition "an original or photocopy of the registration prepared and issued by the Office showing both the current status of and current title to the registration, or by a current copy of information from the electronic database records of the Office showing current status and title of the registration."

As contemplated by 37 C.F.R. § 2.122(d)(1), the registration copies "prepared and issued by the Office showing both the current status of and current title to the

[4] Applicant, as the defendant in this proceeding, was not required to submit evidence. *Yazhong Investing Ltd. v. Multi-Media Tech. Ventures, Ltd.*, Can. No. 92056548, 2018 WL 2113778, at *4 n.13 (TTAB 2018).

[5] The filing of a brief on the case was optional for Applicant, as the defendant in this proceeding. 37 C.F.R. § 2.128(a)(1).

registration," are printed copies of the registration on which the Office has entered the information it has in its records, at the time it prepares and issues the status and title copies, about the current status and title of the registration. That information includes information about the renewal, cancellation, declarations of continued use and incontestability, and recorded documents transferring title. *Peters Sportswear Co., Inc. v. Peter's Bag Corp*., 1975 WL 21269, at *1 (TTAB 1975) ("status and title copies" amount to an acknowledgement by the Office as to what the Office records show with respect to a particular registration as of the time of the mailing of the copies).

Opposer did not comply with Trademark Rule 2.122(d)(1) and instead attached a plain copy of the printed registration to its notice of opposition. A plain copy of the registration is not sufficient to establish that the registration is currently in force and owned by Opposer because it does not indicate the current status and title of the registration. *See Indus. Adhesive Co. v. Borden, Inc.*, 1983 WL 51985, at *4 (TTAB 1983). "The Board has routinely held that the submission of such a copy of a pleaded registration, by itself, is insufficient for purposes of establishing the continuing subsistence and current title of the registration and, therefore, does not suffice to make the registration of record." *United Global Media Grp., Inc. v. Tseng*, Opp. No. 91200786, 2014 WL 5035517, at *2 (TTAB 2014) (citing *Teledyne Techs., Inc. v. W. Skyways, Inc.*, Can. No. 92041265, 2006 WL 337553, at *2 (TTAB 2006)); *Sterling Jewelers Inc. v. Romance & Co.*, Opp. No. 91207312, 2014 WL 1390526, at *4 (TTAB 2014) (opposer failed to comply with "'simple and clear' directives of Trademark Rule

2.122(d)" by submitting a plain copy of a registration attached to the notice of opposition and the registration was not of record). Nor is the issue date for Opposer's pleaded registration substantially contemporaneous with the filing of the notice of opposition. If a pleaded registration issued "substantially" or "reasonably" contemporaneous with the filing of the notice of opposition, the undated, plain copy of the registration will be sufficient to establish current status and title of the registration. *Shenzhen IVPS Tech. Co. v. Fancy Pants Products, LLC*, Opp. No. 91263919, 2022 WL 16646840, at *3-4 (TTAB 2022). Opposer's pleaded registration issued November 9, 2021, over one year and nine months prior to the filing of the notice of opposition on August 14, 2023. The issue date of the registration is not "substantially contemporaneous" with the filing of the notice of opposition, "such that the copy of [the] issued registration alone would be sufficient because the date the registration was issued was very near the date the opposition was filed." *United Global Media Grp.,* 2014 WL 5035517, at *3-4 (finding registration that issued one and a half years prior to filing of notice of opposition was not of record, because it was not "reasonably contemporaneous" with the filing of the proceeding); *Hard Rock Café Int'l (USA), Inc. v. Elsea*, 2000 WL 1279457, at *7 (TTAB 2000) (copies of registration issued three years prior to filing of the notice of opposition not "reasonably contemporaneous" and not of record). Opposer's pleaded registration is therefore not of record.

II. Entitlement to a Statutory Cause of Action and Priority

Inasmuch as Opposer's pleaded registration is not of record and Opposer presented no admissible testimony or other evidence, and Applicant did not admit Opposer's entitlement or any facts that might establish it in its answer, there is no record evidence to support Opposer's real interest in this proceeding or any reasonable basis for its belief of damage. *See Australian Therapeutic Supplies Pty. Ltd. v. Naked TM, LLC*, 965 F.3d 1370, 1372 (Fed. Cir. 2020) (entitlement to a statutory cause of action must be proven by the plaintiff in every inter partes case) (citing *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 128 n.4 (2014)); *Compuclean Mktg. and Design v. Berkshire Prods. Inc.*, 1986 WL 83311, at *4 (TTAB 1986) (Although "the opposer's case, beyond the filing of an answer denying opposer's allegations and standing, was essentially unopposed," the record nonetheless fell "below threshold levels of proof on the [entitlement] issue under any viable criterion of 'real interest' …").

Allegations made in Opposer's notice of opposition or in its brief are not evidence on Opposer's behalf. *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 1371 (Fed. Cir. 2018) (an assertion of a fact in a brief "is not evidence under any of the relevant rules") (citation omitted); *Baseball Am., Inc. v. Powerplay Sports, Ltd.*, Opp. No. 91120166, 2004 WL 1942057, at *2 n.6 (TTAB 2004) ("[T]he factual allegations made in the pleadings are not evidence of the matters alleged, except insofar as they might be deemed to be admissions against interest."). Opposer has therefore failed to establish its entitlement to a statutory cause of action by a preponderance of the evidence.

Additionally, because Opposer's pleaded registration is not of record, Opposer cannot establish priority through the pleaded registration.[6] Because priority is an essential element of any claim under Trademark Act Section 2(d), we need not reach the issue of likelihood of confusion. *WeaponX Performance Prods. Ltd. v. Weapon X Motorsports, Inc.*, Opp. No. 91221553, 2018 WL 1326374, at *8-9 (TTAB 2018); *Exec. Coach Builders, Inc. v. SPV Coach Co.*, Opp. No. 91212312, 2017 WL 3034059, at *27 (TTAB 2017).

III. Summary

Opposer did not make its pleaded registration of record and failed to submit any testimony or evidence during its testimony period. Opposer has failed to establish its entitlement to a statutory cause of action or priority and, therefore, Opposer cannot prevail on its likelihood of confusion claim.

Decision: Opposition No. 91286541 is dismissed.

[6] Had opposer properly introduced its trademark registration, the registration itself would have been sufficient to remove priority as an issue. *See King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 1402 (CCPA 1974).