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TTAB

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July 23, 2025

Opposition No. 91288945

*ABG-Champion LLC, substituted for HBI  
Branded Apparel Enterprises, LLC*

*v.*

*Derek Buzak*

**Before Goodman, Allard, and Stanley,  
Administrative Trademark Judges.**

**By the Board:**

This case comes before the Board for consideration of Opposer's March 12, 2025 motions (1) for leave to amend its notice of opposition to add a claim that Applicant lacked a bona fide intent to use the subject mark at the time the application was filed,<sup>1</sup> and (2) for summary judgment on its newly-proposed claim and its likelihood of confusion claim.<sup>2</sup> The motion to amend is uncontested, and the motion for summary judgment is fully briefed.

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<sup>1</sup> 14 TTABVUE. Citations to the Board record refer to TTABVUE, the Board's online docketing system, unless otherwise specified. *See Turdin v. Trilobite, Ltd.*, Conc. Use. No. 94002505, 2014 TTAB LEXIS 17, at \*6 n.6 (TTAB 2014). The number preceding "TTABVUE" corresponds to the docket entry number, and any number following "TTABVUE" refers to the page number of the docket entry where the cited materials appear.

<sup>2</sup> 15 TTABVUE.

We have considered all of the parties' arguments and evidence submitted in connection with the motion and do not recount them here, except as necessary to explain this decision. *Guess? IP Holder LP v. Knowluxe LLC*, Can. No. 92060707, 2015 TTAB LEXIS 482, at \*4-5 (TTAB 2015).

## **I. Background**

Applicant seeks registration on the Principal Register of the mark I FEEL LIKE A CHAMPION in standard characters for "Sports shirts" in International Class 25.<sup>3</sup>

Opposer opposes registration of Applicant's mark on the ground of likelihood of confusion under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), based on its common law rights in the mark CHAMPION and "CHAMPION-inclusive marks" for a "wide variety of apparel and related goods."<sup>4</sup> Opposer also pleads ownership of six pleaded registered marks containing the term CHAMPION alone or in conjunction with other terms for various apparel items in International Class 25.<sup>5</sup>

Applicant, in his answer, denies the salient allegations of the notice of opposition and asserts certain affirmative defenses, which we have considered only to the extent that they are amplifications of Applicant's denials and are germane to Opposer's motion for summary judgment.<sup>6</sup>

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<sup>3</sup> Application Serial No. 97759811, filed on January 18, 2023, under Trademark Act Section 1(b), 15 U.S.C. § 1051(b).

<sup>4</sup> 1 TTABVUE 5, ¶ 1.

<sup>5</sup> 1 TTABVUE 5-6, ¶ 4.

<sup>6</sup> 5 TTABVUE.

## **II. Motion to Amend**

The Board first addresses Opposer's motion for leave to amend the notice of opposition. Opposer's motion is granted as conceded because Applicant did not contest or otherwise respond to this motion. Trademark Rule 2.127(a), 37 C.F.R. § 2.127(a) ("When a party fails to file a brief in response to a motion, the Board may treat the motion as conceded."). In view thereof, Opposer's amended notice of opposition is accepted and is now Opposer's operative pleading in this proceeding.<sup>7</sup>

## **III. Motion for Summary Judgment**

We now turn to Opposer's motion for summary judgment on its newly-pleaded claim that Applicant lacked the requisite bona fide intent to use his involved mark at the time he filed his application and its likelihood of confusion claim. For purposes of the motion, we deem Applicant to have denied the newly asserted allegations of lack of bona fide intent to use in the amended notice of opposition. *Societe des Produits Marnier Lapostolle v. Distillerie Moccia S.R.L.*, Opp. No. 73080, 1989 TTAB LEXIS 2, at \*2 n.4 (TTAB 1989); *see also* TBMP § 528.07(a) ("For purposes of determining the summary judgment motion, the Board will deem such new allegations to be denied if no amended answer is accepted and of record at the time.").

### **A. Standard for Summary Judgment**

Summary judgment is appropriate when there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a). The Board may not resolve disputes of material fact; it may only

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<sup>7</sup> Opposer's Amended Notice of Opposition is at 14 TTABVUE 13-115.

ascertain whether a genuine dispute regarding a material fact exists. *See Lloyd's Food Prods., Inc. v. Eli's, Inc.*, 987 F.2d 766 (Fed. Cir. 1993); *Olde Tyme Foods, Inc. v. Roundy's, Inc.*, 961 F.2d 200 (Fed. Cir. 1992). A factual dispute is genuine if, on the evidence of record, a reasonable fact finder could resolve the matter in favor of the non-moving party. *See Opryland USA Inc. v. Great Am. Music Show Inc.*, 970 F.2d 847, (Fed. Cir. 1992); *Olde Tyme Foods*, 961 F.2d at 202. The non-moving party may not rest on the mere allegations of its pleadings and assertions of counsel, but must designate specific portions of the record or produce additional evidence showing the existence of a genuine dispute of material fact for trial.

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

Entitlement to a statutory cause of action under Section 13 or 14 of the Trademark Act must be established in every Board inter partes case. *See Corcamore, LLC v. SFM, LLC*, 978 F.3d 1298, 1303 (Fed. Cir. 2020); *Austl. Therapeutic Supplies Pty. Ltd. v. Naked TM, LLC*, 965 F.3d 1370, 1374 (Fed. Cir. 2020) (citing *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 128 n.4 (2014)). To establish entitlement, a plaintiff must demonstrate (i) an interest falling within the zone of interests protected by the statute and (ii) a reasonable belief in damage proximately caused by the registration or continued registration of the mark. *See Corcamore*, 978 F.3d at 1303; *Spanishtown Enters., Inc. v. Transcend Res., Inc.*, Can. No. 92070340, 2020 TTAB LEXIS 481, at \*4-5 (TTAB 2020).

For purposes of entertaining this motion for summary judgment, we find there is no genuine dispute of material fact regarding Opposer's entitlement to oppose

registration of Applicant's mark on the ground of likelihood of confusion in view of Opposer's submission of the status and title copies of its six pleaded registrations.<sup>8</sup> See, e.g., *Shenzhen IVPS Tech. Co. v. Fancy Pants Prods., LLC*, Opp. No. 91263919, 2022 TTAB LEXIS 383, at \*20 (TTAB 2022) (valid and subsisting pleaded registration establishes opposer's direct commercial interest in the proceeding and its belief in damage) (citing *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 945 (Fed. Cir. 2000)). Having established that there is no genuine dispute of material fact as to its entitlement to oppose registration on the ground of likelihood of confusion, Opposer may also pursue its claim lack of bona fide intent to use. See *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1377 (Fed. Cir. 2012) (citing *Jewelers Vigilance Comm., Inc. v. Ullenberg Corp.*, 823 F.2d 490, 493 (Fed. Cir. 1987) ("Once [entitlement to a statutory cause of action] is established, the opposer is entitled to rely on any of the grounds set forth in section 2 of the Lanham Act which negate applicant's right to its subject registration.")).

### **C. Applicant's Responses to Admission Requests – Motion to Reopen**

Opposer's motion for summary judgment is based in part on Applicant's failure to respond to Opposer's requests for admission which it asserts results in automatic admission of said requests by operation of Fed. R. Civ. P. 36(a).

In support of its position, Opposer explains that on April 22, 2024 it served its First Set of Requests for Production and First Set of Interrogatories to which Applicant responded on June 12, 2024.<sup>9</sup> Opposer states it then served its Requests

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<sup>8</sup> 14 TTABVUE 22-114.

<sup>9</sup> 15 TTABVUE 4-5.

for Admissions on December 23, 2024, but that Applicant did not respond to these requests at all.<sup>10</sup> Under the declaration of counsel, Opposer introduces all of its requests. Opposer argues that Applicant should be deemed to have admitted key elements of Opposer's likelihood of confusion and lack of bona fide intent claims because Applicant did not serve responses to its Requests for Admission.

In its response brief, Applicant asserts, in part, that his "counsel has no record of having received Opposer's First Requests for Admissions"; that "Applicant had previously served an Answer to the Opposition, served Initial Disclosures, served Responses to Requests for Production, and served Answers to Interrogatories"; and that "[h]ad Applicant's counsel seen any Requests for Admissions, Applicant would have responded to same as well."<sup>11</sup>

Applicant seeks leave to serve answers to Opposer's Requests for Admission pursuant to Fed. R. Civ. P. 36(b) and states that "Opposer will not be prejudiced by the granting of such a request, and that the granting of the request would be consistent with the preference to decide cases on the merits, as well as traditional notions of fairness."<sup>12</sup> Applicant further emphasizes that "cases should be decided on the merits rather than on procedural defects" and "that admissions in this case are contradicted by the evidence, and should not be relied on for purposes of deciding whether entry of summary judgment is appropriate."<sup>13</sup>

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<sup>10</sup> *Id.* at 5.

<sup>11</sup> 17 TTABVUE 7.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 7-8.

We construe these assertions in Applicant's brief as a motion to withdraw and amend its admissions pursuant to Fed. R. Civ. P. 36(b).

The rule states:

(b) Effect of an Admission; Withdrawing or Amending It.

A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended. ... [T]he court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits. An admission under this rule is not an admission for any other purpose and cannot be used against the party in any other proceeding.

Emphasized throughout the Federal Rules of Civil Procedure is the importance of resolving actions on the merits whenever possible. *Johnston Pump/General Valve Inc. v. Chromalloy Am. Corp.*, Opp. No. 76991, 1989 TTAB LEXIS 50, at \*7 (TTAB 1989). “[T]he decision to allow a party to withdraw its admission is quintessentially an equitable one, balancing the rights to a full trial on the merits, including the presentation of all relevant evidence, with the necessity of justified reliance by parties on pre-trial procedures and finality as to issues deemed no longer in dispute.” *Giersch v. Scripps Networks Inc.*, Can. No. 92045576, 2007 TTAB LEXIS 64, at \*5 (TTAB 2007) (citation omitted).

As noted above, there is a two-prong test for allowing withdrawal or amendment of admissions: the presentation of the merits of the action will be subserved thereby, and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining the action on the merits.

With respect to the first prong, the merits of the action will be subserved by allowing amendment, if necessary, of the deemed admissions because, if withdrawal of the deemed admissions is not allowed, Applicant will be held to have admitted dispositive facts that it otherwise disputes.

As for the second prong, we find that Opposer will not be prejudiced. As contemplated under Rule 36(b), “‘prejudice’ is not simply that the party who initially obtained the admission will now have to convince the fact finder of its truth, but rather, relates to the special difficulties a party may face caused by the sudden need to obtain evidence upon withdrawal or amendment of admission.” *Giersch*, 2007 TTAB LEXIS 64, at \*7, quoting *Kerry Steel, Inc. v. Paragon Industries, Inc.*, 106 F.3d 147 (6th Cir. 1997).

In addition, Opposer has pointed to no particular prejudice in the form of special difficulties it has faced in its need to obtain evidence. Indeed, in its reply, Opposer points out that “even without Applicant’s admission that he lacked a bona fide intent to use the mark, the record in this proceeding makes clear that Applicant lacks any evidence to rebut the presumption created by Applicant’s lack of documentation.”<sup>14</sup>

Accordingly, we hereby grant Applicant’s motion to withdraw or amend the admissions as put. Consequently, Opposer cannot rely on Applicant’s deemed admissions in seeking summary judgment.

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<sup>14</sup> 18 TTABVUE 5.



#### **D. Standard for Lack of Bona Fide Intent Claim**

We turn to the claim of lack of bona fide intent to use and consider the motion with regard thereto on the merits.

Trademark Act Section 1(b)(1), 15 U.S.C. § 1051(b)(1), states,

[A] person who has a bona fide intention, under circumstances showing the good faith of such person, to use a trademark in commerce may request registration of its trademark ....

Whether an applicant has a bona fide intention to use the mark in commerce is an objective determination based on the totality of the circumstances. *See M.Z. Berger & Co. v. Swatch AG*, 787 F.3d 1368, 1376 (Fed. Cir. 2015); *Swiss Grill Ltd. v. Wolf Steel Ltd.*, Opp. No. 91206859, 2015 TTAB LEXIS 312, at \*24 (TTAB 2015). The evidentiary bar for showing bona fide intent to use is not high, but more is required than “a mere subjective belief.” The objective evidence must indicate an intention to use the mark that is “firm” and “demonstrable.” *M.Z. Berger*, 787 F.3d at 1375-76; *Swiss Grill*, 2015 TTAB LEXIS 312, at \*24; *see also Bos. Red Sox Baseball Club LP v. Sherman*, Opp. No. 91172268, 2008 TTAB LEXIS 67, at \*16 (TTAB 2008); *Lane Ltd. v. Jackson Int’l Trading Co.*, Opp. No. 91092025, 1994 TTAB LEXIS 41, at \*16-17 (TTAB 1994).

As a general rule, the factual question of intent is unsuited to disposition on summary judgment. *See Copelands’ Enters., Inc. v. CNV, Inc.*, 945 F.2d 1563, 1567 (Fed. Cir. 1991). Nonetheless, one way an opposer can establish its prima facie case of no bona fide intent on summary judgment is by proving the absence of a genuine dispute of material fact that applicant has no documentary evidence to support its allegation in the application of its claimed bona fide intent to use the mark in

commerce as of the application filing date. *Cf. Saul Zaentz Co. v. Bumb*, Opp. No. 91156452, 2010 TTAB LEXIS 236, at \*13 (TTAB 2010) (an 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). If the opposer meets this burden, the burden shifts to the applicant to come forward with evidence raising a genuine dispute of material fact that either explains or outweighs the lack of documentary evidence. *Id.* Where there is no evidence of an applicant's bona fide intent to use the mark at issue on the claimed goods or services as of the filing date of the application, entry of summary judgment on a claim that the applicant had no bona fide intent to use the mark in commerce when he filed his involved application may be warranted. *See Honda Motor Co. v. Winkelmann*, Opp. No. 91170552, 2009 TTAB LEXIS 202, at \*14 (TTAB 2009).

**E. Summary of the Parties' Evidence and Arguments Regarding the Lack of a Bona Fide Intent Claim**

Opposer asserts that Applicant "has no documents evidencing or supporting Applicant's bona fide intention to use Applicant's Mark in commerce in connection with the specific goods listed in the Application, as of the filing date of the Application."<sup>15</sup> Opposer asserts that "Applicant admitted in his responses to Opposer's Interrogatories that he has no plans to offer for sale or distribute goods under Applicant's Mark;" that during discovery Opposer specifically "requested [that] Applicant produce '[a]ll documents evidencing and supporting Applicant's bona fide intention to use Applicant's Mark in commerce in connection with the specific goods

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<sup>15</sup> 15 TTABVUE 2.

listed in the Application, as of the filing date of the Application”; that “[a]fter initially stating that he would produce ‘any relevant, non-privileged documents responsive to this request that are within its custody or control,’ Applicant’s counsel confirmed in an email to Opposer’s counsel on September 27, 2024, that Applicant had no documents to produce”; and that “[t]o date, Applicant has not produced any documents in this Opposition ... meaning Applicant has not produced a single document showing any bona fide intent to use Applicant’s Mark with the specific goods listed in the Application, as of the filing date of the Application.”<sup>16</sup> Opposer argues that “in light of the absence of documentary evidence supporting Applicant’s claim of bona fide intent to use, summary judgment is warranted.”<sup>17</sup>

Opposer has submitted copies of its discovery requests and Applicant’s responses to its interrogatories and document requests. Specifically, Opposer refers to Applicant’s response to its Interrogatory No. 14 which reads as follows:

14. Describe in detail Your plans to expand the sale, offering for sale, or distribution of goods or services sold under Applicant’s Mark, including any Business Plans.

Applicant’s Response: Not applicable<sup>18</sup>

Further the submitted evidence demonstrates that Applicant responded that he has:

1. No documents sufficient to show the specific geographic areas he has sold or intends to sell his goods. (Document Request No. 8).<sup>19</sup>

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<sup>16</sup> *Id.* at 5.

<sup>17</sup> *Id.* at 16.

<sup>18</sup> *Id.* at 159.

<sup>19</sup> *Id.* at 149.

2. No documents sufficient to show the date or proposed date on which he commenced use or will commence use of his mark for his goods. (Document Request No. 9).<sup>20</sup>
3. No documents concerning business plans for the goods offered in connection with this mark. (Document Request No. 10).<sup>21</sup>
4. No document sufficient to identify any plans, intentions, or negotiations to sell products or services under Applicant's Mark through any retailer, company, store, ecommerce website, social media platform, mobile app, or other entity. (Document Request No. 26).<sup>22</sup>

Applicant's response to the motion for summary judgment does not include any evidence of his bona fide intent to use his mark.<sup>23</sup> Applicant, through counsel, merely asserts in his brief that he "did not have an existing company or existing product line at the time of filing, but rather planned to introduce products in the near future"; that he "has not pursued the introduction of [his] products because of this Proceeding and the obvious uncertainty associated with a pending legal conflict"; and that it is not his "fault that Opposer attacked Applicant's filing quickly, before Applicant could advance his business further."<sup>24</sup>

In reply, Opposer asserts that "the lack of documentary evidence creates a presumption that Applicant did not have a bona fide intent to use Applicant's mark"; that "Applicant is required to come forth with objective evidence to support his intent to use the Applicant's Mark"; that "[h]e did not and cannot,

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 150.

<sup>22</sup> *Id.* at 152.

<sup>23</sup> The only evidence attached to his response includes two third-party registrations in support of his position against the likelihood of confusion claim.

<sup>24</sup> 17 TTABVUE 13-14.

and further litigation on this claim will not alter the result.”<sup>25</sup> Opposer also points out that “Applicant attempts to excuse his lack of documentary evidence by blaming the present opposition proceeding as the reason Applicant has no documents nor has invested in his business” and states that “[t]his rationale ... is entirely illogical since the opposition necessarily occurred after the filing date of the Application, and it is the filing date of the Application that is the critical date for such evidence.”<sup>26</sup>

## **F. Analysis**

We have carefully reviewed the record. Applicant has had opportunities -- both in responding to discovery, and in responding to Opposer’s motion -- to come forward with documentary or other evidence to show any concrete steps taken or plans made to actually use his mark contemporaneous with filing his involved application, such as manufacturing, licensing or marketing efforts, a functioning website, correspondence with potential licensees, marketing plans, business plans, or the creation of labels or promotional materials. *See SmithKline Beecham Corp. v. Omnisource DDS LLS*, Opp. No. 91178539, 2010 TTAB LEXIS 431, at \*16 (TTAB 2010). There is simply no documentary evidence of Applicant’s bona fide intent to use Applicant’s mark in commerce to identify his goods at the time he filed his application, and Applicant has not come forth with any evidence to explain his lack of documentary evidence.

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<sup>25</sup> 18 TTABVUE 3.

<sup>26</sup> *Id.* at 6.

Applicant's response to the motion for summary judgment does not include any objective evidence of "circumstances showing ... good faith" as required by Section 1(b), and does not support a finding that his intent to use is bona fide. The filing of the involved application itself does not constitute evidence that Applicant had a bona fide intent to use the mark when he filed the involved application. *Research in Motion Ltd. v. NBOR Corp.*, Opp. No. 91179284, 2009 TTAB LEXIS 673, at \*15 (TTAB 2009) ("If the filing and prosecution of a trademark application constituted a bona fide intent to use a mark, then in effect, lack of a bona fide intent to use would never be a ground for opposition or cancellation..."). Likewise, Applicant's hopes to introduce a product in the future are insufficient to show bona fide intent. *See Lincoln Nat'l. Corp. v. Anderson*, Opp. No. 91192939, 2014 TTAB LEXIS 52, at \*18 (TTAB 2014) (an applicant's "idealistic hopes" to build a business around a mark at some indefinite time in the future do not suffice to show bona fide intent to use). Indeed, in this regard, we note that there is nothing in the record to explain how Applicant has the capacity to produce the goods set forth in the application. The Board has "repeatedly found" a lack of bona fide intent to use a mark where individuals lack the capacity to produce the goods identified in the application. *Swatch AG (Swatch SA) (Swatch Ltd.) v. M.Z. Berger & Co.*, Opp. No. 91187092, 2013 TTAB LEXIS 515, at \*45 (TTAB 2013); *see also L'Oreal S.A. v. Marcon*, Opp. No. 91184456, 2012 TTAB LEXIS 77, at \*36 (TTAB 2012); *Saul Zaentz Co.*, 2010 TTAB LEXIS 203, at \*27; *Wet Seal, Inc. v. FD Mgmt., Inc.*, Opp. No. 91157022, 2007 TTAB LEXIS 21, at \*47 (TTAB 2007).

Applicant's statement, through counsel, of his intent to use his mark and his denial that he lacked a bona fide intent -- both unsworn and entirely lacking in factual detail -- are insufficient to raise a genuine dispute of material fact regarding Applicant's bona fide intent to use a mark. *See Saul Zaentz Co.*, 2010 TTAB LEXIS 203, at \*27; *see also Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 1371 (Fed. Cir. 2018) ("attorney argument is no substitute for evidence").

Because there is no documentary evidence of Applicant's bona fide intent to use the involved mark in commerce to identify his goods at the time he filed his application, and Applicant has not come forth with any sufficient testimonial evidence to explain his lack of documentary evidence, or otherwise establish the requisite intent, Applicant has failed to establish that a genuine dispute of material fact exists as to whether Applicant had the requisite bona fide intent to use his mark on the identified goods as of that filing date.

Having considered the arguments and evidence on summary judgment, and having drawn all justifiable inferences in favor of Applicant as the non-movant, Opposer has established that there is no genuine dispute of material fact as to Applicant's lack of bona fide intent to use Applicant's mark as of the filing date of the application and Applicant has not rebutted this prima facie case with any probative evidence that bears upon his intent to use. Accordingly, Opposer's motion for summary judgment is **granted** on its claim of no bona fide intent to use the mark in commerce. Having reached this conclusion, we need not reach Opposer's claim concerning the likelihood of confusion. *See Azeka Bldg. Corp. v. Azeka*, Opp. No.

91218679, 2017 TTAB LEXIS 123, at \*4 (TTAB 2017) (Board has “discretion to decide only those claims necessary to enter judgment and dispose of the case”) (*quoting Multisorb Tech., Inc. v. Pactive Corp.*, Can. No. 92054730, 2013 TTAB LEXIS 616, at \*6-7 (TTAB 2013)).

The opposition is sustained under Trademark Act Section 1(b) and Application Serial No. 97759811 is refused registration.