

**This Opinion is Not a
Precedent of the TTAB**

Mailed: September 30, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Marie Junie St. Clair Bernard
v.
Daphnee Lagredelle

Opposition No. 91289395

Alec Allen Ross of The Trademark Place,
for Marie Junie St. Clair Bernard,

Daphnee Lagredelle, pro se.

Before Goodman, Lavache, and Brock,
Administrative Trademark Judges.

Opinion by Brock, Administrative Trademark Judge:

Daphnee Lagredelle (“Applicant”) seeks registration on the Principal Register of
the mark FABTAH in standard characters for

Cosmetics; Eyeshadow; Foundation; Lipstick; Lipsticks;
Cosmetics and cosmetic preparations; Cosmetics and
make-up; Cosmetics for children; Cosmetics, namely, lip
primer; Cosmetics, namely, lip repairers; Eye-shadow;
Eyeshadow palettes; Foundation creams; Lip gloss; Lip
gloss and wands therefor sold as a unit; Lip gloss palette;
Lipstick holders; Make-up; Make-up foundations; Make-up
pencils; Make-up powder; Make-up primer; Make-up
primers; Make-up remover; Make-up removing creams;
Make-up removing lotions; Make-up removing milks;

Make-up removing preparations; Make-up sets; Beauty care cosmetics; Body and beauty care cosmetics; Colognes, perfumes and cosmetics; Compacts containing make-up; Creamy foundation; Eye make-up; Eyebrow cosmetics; Eyes make-up; Facial make-up; Foundation make-up; Liquid foundation (mizu-oshiroi); Make-up foundation; Nail cosmetics; Natural cosmetics; Natural mineral make-up; Non-medicated cosmetics; Organic cosmetics; Powder for make-up; Private label cosmetics; Skin moisturizers used as cosmetics; Theatrical make-up; Theatrical makeup; Waterproof makeup in International Class 3.¹

Marie Junie St. Clair Bernard (“Opposer”) opposes registration of the applied-for mark on the grounds of likelihood of confusion under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), false suggestion of a connection under Section 2(a) of the Trademark Act, 15 U.S.C. § 1052(a), and fraud. Opposer claims ownership of the previously used mark FABTAH in connection with “cosmetics and cosmetics-related goods”² and ownership of a pending trademark application for the mark FABTAH for cosmetics, as well as an abandoned application for the same mark.³

Opposer attached to her notice of opposition a Trademark Status and Document Retrieval (TSDR) printout of her pending application, a TSDR printout of her abandoned application, screenshots of Opposer’s website, and documents identified

¹ Application Serial No. 97570644 was filed on August 30, 2022 based on Applicant’s allegation of a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b). The application includes the statement that “[t]he wording ‘FABTAH’ has no meaning in a foreign language.”

² 1 TTABVUE 3. Citations in this opinion to the briefs and other materials in the case docket refer to TTABVUE, the Board’s online docketing system. *See New Era Cap Co. v. Pro Era, LLC*, Opp. No. 91216455, 2020 TTAB LEXIS 199, at *1-5 n.1 (TTAB 2020). 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.

³ Application Serial No. 98057183. 1 TTABVUE 3. Application Serial No. 90330287 was abandoned prior to institution of the instant opposition. *Id.* at 3, 15.

as “Opposer’s original specimens [of use], filed on November 19, 2020, showing use in commerce of Opposer’s FABTAH [mark] for cosmetics nearly two years prior to Applicant’s Application.”⁴

Applicant filed an answer denying the salient allegations in the notice of opposition.⁵

Each party filed a trial brief.⁶

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 challenged application.

Neither party submitted evidence during their assigned trial period and there are no material admissions in the answer.

II. Entitlement to a Statutory Cause of Action

Entitlement to a statutory cause of action must be established in every inter partes case. *Austl. Therapeutic Supplies Pty. Ltd. v. Naked TM, LLC*, 965 F.3d 1370, 1373-74 (Fed. Cir. 2020) (citing *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 125-26 (2014)). An opposition plaintiff must demonstrate an interest

⁴ 1 TTABVUE 6-24.

⁵ 4 TTABVUE. Despite the certificate of service appended thereto, in its trial brief, Opposer alleges for the first time that Applicant did not properly serve its answer upon Opposer, but does not raise an objection. 5 TTABVUE 2 (“Opposer was only made aware of Applicant’s Answer due to a filing receipt notification from the USPTO; Opposer never received certificate of service from the Applicant—neither by email nor physical mail.”). Even taking this as an objection, we deem Opposer’s failure to timely object to any service deficiencies in Applicant’s answer a waiver of this objection.

⁶ Opposer’s brief is at 5 TTABVUE; Applicant’s brief is at 6 TTABVUE.

falling within the zone of interests protected by the statute, and proximate causation. *Corcamore, LLC v. SFM, LLC*, 978 F.3d 1298, 1303 (Fed. Cir. 2020) (citing *Lexmark*, 572 U.S. at 120-37); *id.* at 1305 (applying *Lexmark* to inter partes TTAB cases). Demonstrating a real interest in opposing registration of a mark satisfies the zone-of-interests requirement, and demonstrating a reasonable belief in damage by the registration of the opposed mark establishes damage proximately caused by registration of the mark. *Id.* at 1305-06.

Opposer, as plaintiff in this proceeding, bears the burden of establishing her statutory entitlement to bring a cause of action and her claims by a preponderance of the evidence. See *Shenzhen IVPS Tech. Co. v. Fancy Pants Prods., LLC*, Opp. No. 91263919, 2022 TTAB LEXIS 383, at *5-6 (TTAB 2022) (citing *B&B Hardware, Inc. v. Hargis Ind., Inc.*, 575 U.S. 138, 144, 135 S. Ct. 1293, 191 L. Ed. 2d 222 (2015) (“The party opposing registration bears the burden of proof, see § 2.116(b), and if that burden cannot be met, the opposed mark must be registered, see 15 U.S.C. § 1063(b).”).

Opposer claimed ownership of prior common law rights, a pending use-based trademark application, and an abandoned use-based trademark application that Opposer claims to have filed prior to Applicant’s application.⁷ As stated above, however, Opposer did not introduce any evidence during her trial period; instead, Opposer attached exhibits to the notice of opposition.⁸ None of these materials

⁷ Opposer’s trial brief, 5 TTABVUE 3.

⁸ 1 TTABVUE 3, 8-24.

constitute evidence by virtue of their attachment to the pleading. *See* Trademark Rule 2.122(c),(d), 37 C.F.R. § 2.122(c),(d) (with an exception for a pleaded registration, not applicable here, evidence may not be made of record at the pleading stage); *see also* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 317 (2025).

As indicated, the facts regarding entitlement are part of an opposer's case in chief, cannot be based solely on allegations in the notice of opposition, and must be affirmatively proved. *Lipton Indus. v. Ralston Purina Co.*, 670 F.2d 1024, 1028 (CCPA 1982). The filing of an application for a trademark that is identical to Applicant's applied-for mark for legally identical goods may be a basis for establishing Opposer's entitlement. *See Toufigh v. Persona Parfum, Inc.*, Can. No. 92048305, 2010 TTAB LEXIS 237, at *5-6 (TTAB 2010) ("[E]vidence of such a refusal is not a requirement to establish standing. Rather, it is sufficient if the circumstances are such that it would be reasonable for a petitioner to believe that the existence of the respondent's registration would damage him, e.g., a reasonable belief that there is a likelihood of confusion between the marks, or that the presence on the register of the respondent's mark may hinder the petitioner in using or registering his mark."). As explained above, however, Opposer did not properly introduce her pending trademark application into the evidentiary record to prove her allegation of ownership of a pending trademark application.⁹ Accordingly, Opposer has failed to establish entitlement on this basis.

⁹ Opposer also did not properly introduce her abandoned application, but even if she had, it would have been of very limited probative value for proving entitlement. *See Kemi Organics*,

As to Opposer's alleged common law rights,

[t]here is not a scrap of evidence in the record concerning [Opposer's] use of [FABTAH] as a trademark, or of its use of this term as part of its trade name, or of any commercial activities ... in the manufacture or sale of [cosmetics]. ... Accordingly, Opposer has not proved that it has any real interest in the controversy. While Opposer has alleged commercial activities and use of [FABTAH] in connection with them in its notice of opposition ... mere allegations of a party's basis for standing are insufficient, without proof.

Lumiere Prods., Inc. v. Int'l Tel. & Tel. Corp., Opp. No. 91066857, 1985 TTAB LEXIS 42, at *3 (TTAB 1985).

Therefore, Opposer has not established entitlement based on her alleged common law rights.

In sum, without submitting any evidence into the record, Opposer has failed to prove the underpinning allegations in the notice of opposition that would establish her entitlement to a statutory cause of action for any of Opposer's claims. This failure, alone, is a sufficient basis to dismiss this proceeding.¹⁰

Decision: The opposition to registration of Applicant's FABTAH mark in Application Serial No. 97570644 based on Trademark Act Sections 2(d), 2(a) and fraud is **dismissed**.

LLC v. Gupta, Can. No. 92065613, 2018 TTAB LEXIS 149, at *17-18 (TTAB 2018) (abandoned application only probative to show it had been filed).

¹⁰ Even if Opposer had established entitlement, there is no evidence of record, nor any material admission of fact in Applicant's answer to prove Opposer's claims of likelihood of confusion, false suggestion of a connection and fraud.