

TTAB
78365174

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

MERIDIAN CAPITAL GROUP, LLC, :
 :
Petitioner, :
 :
 :
v. :
 :
 :
MERIDIAN BANK :
 :
Registrant. :

Cancellation No.: 92046990

Reg. No. 3,084,445
Mark: MERIDIAN BANK

SIR:

CERTIFICATE OF FIRST-CLASS MAILING

I hereby certify that this correspondence and the documents referred to as attached therein are being deposited today with the United States postal service as first class postage-prepaid mail in an envelope addressed to: Box TTAB NO FEE, Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

3-8-07

Date

John F. A. Earley III
John F. A. Earley III
Reg. No. 31,350

REGISTRANT'S BRIEF IN SUPPORT OF ITS MOTION TO DISMISS

I. Introduction

The above-captioned cancellation proceeding filed on January 26, 2007 should be dismissed because the Cancellation Petition fails to plead a statutory ground that would, if proven, negate Registrant's entitlement to the subject registration. Accordingly, Petitioner's Cancellation Petition fails to state a claim upon which relief can be granted, and therefore, dismissal of the cancellation proceeding is warranted.



03-12-2007

II. Background

Registrant, Meridian Bank, is the owner of Registration No. 3,048,445 registered on April 25, 2006 for MERIDIAN BANK for banking services. On January 26, 2007, Petitioner, Meridian Capital Group, LLC (“Meridian Capital”), filed the Cancellation Petition at issue here. Said Cancellation Petition fails to identify a statutory basis that, if proven, would negate Registrant’s right to the subject registration.

III. Argument

A motion to dismiss for failure to state a claim upon which relief can be granted relates solely to the legal sufficiency of a cancellation petition. *See* TBMP §503.02. In order to withstand a motion to dismiss, the cancellation petition need only allege such facts as would if proved, establish that the petitioner is entitled to the relief sought. Therefore, a petitioner need only show that (1) it has standing to maintain the proceeding, and (2) it has a valid statutory ground for denial of the registration sought. DC Comics v. Onetech Computer Consulting, Inc. 76 U.S.P.Q. 2d 1472 (TTAB, 2005) (citing Lipton Industries, Inc. v. Ralston Purina Co., 670 F.2d 1024, 213 U.S.P.Q. 185, 187 (CCPA 1982); Young v. AGB Corp., 152 F.3d 1377, 47 U.S.P.Q. 2d 1752, 1755 (Fed. Cir. 1988)). The Cancellation Petition at issue here is devoid of allegation of any statutory basis which would, if proven, negate Registrant Meridian Bank’s right to the subject registration. To the contrary, Petitioner specifically pleads (see paragraphs 22 and 23 of the Cancellation Petition) that there is no likelihood of confusion between the marks at issue. For this reason, dismissal is warranted.

Petitioner Meridian Capital, which asserts in the Cancellation Petition that there is no likelihood of confusion between its mark MERIDIAN CAPITAL GROUP and design and

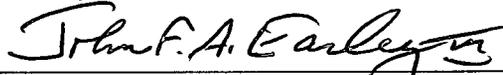
Meridian Bank's mark MERIDIAN BANK, apparently is trying to come before the TTAB prematurely by filing the cancellation petition without having a statutory basis, rather than appeal to the TTAB, if necessary, at the appropriate time in its Application Serial No. 78/657,200.

IV. Conclusion

This cancellation proceeding, accordingly, must be dismissed for failure to allege a statutory ground negating Registrant's entitlement to its registration.

Respectfully submitted,

HARDING, EARLEY, FOLLMER & FRAILEY
Attorneys for Meridian Bank



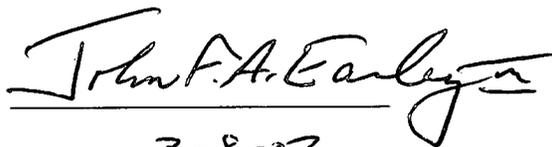
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CERTIFICATE OF SERVICE

I hereby certify that on the 8th of March 2007, a true and correct copy of the foregoing Registrant's Brief in Support of its Motion to Dismiss was mailed today by United States first-class, postage-prepaid mail to:

Fredrick Whitmer, Esquire
Monica B. Richman, Esquire
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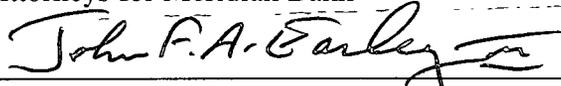

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Motion to Dismiss, Petitioner did not plead a statutory ground for the cancellation, and said failure to plead a statutory ground warrants dismissal.

Therefore, Registrant seeks entry of an order dismissing the above captioned cancellation proceeding.

Respectfully submitted,

HARDING, EARLEY, FOLLMER & FRAILEY
Attorneys for Meridian Bank



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CERTIFICATE OF SERVICE

I hereby certify that on the 8th of March 2007, a true and correct copy of the foregoing Registrant's Motion to Dismiss Cancellation Proceeding for Failure to State a Claim Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure was mailed today by United States first-class, postage-prepaid mail to:

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