UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

DUNN

Mailed: September 11, 2009

Cancellation No. 92050960

NSM Resources Corporation

v.

Spin Master Ltd.

Before Bucher, Drost, and Mermelstein, Administrative Trademark Judges:

By the Board:

This case comes up on respondent's motion, filed May 18, 2009, to dismiss the petition to cancel for failure to state a claim. The motion has been fully briefed.

In its petition to cancel, NSM Resources Corporation, acting pro se, brings claims that respondent's mark (below)

for "full line of flying toys, air-powered toys, radio controlled toys, children's novelty and craft toys" (Registration No. 2944406) is used with the term HOMETOWN HUCK, and that this use creates a false suggestion of a connection with petitioner and dilutes the distinctive quality of petitioner's pleaded marks HUCK and HUCK DOLL, also used for toys (Registration Nos. 3244135 and 3310854). The petition to cancel states, in pertinent part:

> Spin Master has so many Trademarks that Registrant Spin Master does not concern itself with other brands or other Trademarks when manufacturing toy products, the Registrant Spin Master only focuses on its own. For these reasons, the Registrant Spin Master, if it is to place the S SPIN MASTER Trademark (logo) on products and then deny involvement, basically is denying any validity to this Trademark registration.

Attached to the petition to cancel is a copy of a photograph of a blister pack containing respondent's toys, which packaging bears respondent's SPIN MASTER mark and promotes "Hometown Huck vs. The Scorchion" as one of the Thumb Wrestling Federation's matches.

FROM FRONT OF PACKAGING

FROM BACK OF PACKAGING

In order to withstand a motion to dismiss for failure to state a claim upon which relief may be granted, a pleading need only allege such facts as would, if proved, establish that the plaintiff is entitled to the relief

sought, that is, (1) the plaintiff has standing to maintain the proceeding, and (2) a valid ground exists for denying the registration sought. *See Lipton Industries, Inc. v. Ralston Purina Company*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982). In *Ritchie v. Simpson,* 170 F.3d 1092, 50 USPQ2d 1023 (Fed. Cir. 1999), the Federal Circuit enunciated a liberal threshold for determining standing, i.e., whether one's belief that one will be (or is being) damaged by the registration is reasonable and reflects a real interest in the case. *See also Jewelers Vigilance Committee Inc. v. Ullenberg Corp.*, 823 F.2d 490, 2 USPQ2d 2021 (Fed. Cir. 1987); and *Lipton Industries, Inc. v. Ralston Purina Company*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982).

There is nothing in the instant petition to cancel which indicates a reasonable belief in damage or an interest of petitioner in cancelling respondent's mark SPIN MASTER and design, the subject of Registration No. 2944406. The petition indicates that respondent's use of the unrelated HOMETOWN HUCK designation is adverse to petitioner's interest and warrants cancellation of respondent's SPIN MASTER mark.[1] Because there is no connection between

[1] The Board strongly recommends that petitioner seek experienced trademark counsel to protect its interests. Even if HOMETOWN HUCK was the subject of a trademark application or registration (which it is not), the Board does not have the authority to order a party to cease use of a term. *See Genesco Inc. v. Martz*, 66 USPQ2d 1260, 1262 (TTAB 2003)("the Board is an

petitioner's expressed interest in preventing respondent's use of HOMETOWN HUCK and its petition to cancel respondent's registered mark SPINMASTER and design, we find that petitioner has failed to meet the threshold requirement of establishing its standing to proceed with its claims. Moreover, inasmuch as petitioner alleges that respondent's use of the term HOMETOWN HUCK creates a false suggestion of a connection with petitioner and dilutes the distinctive quality of petitioner's pleaded marks HUCK and HUCK DOLL, the petition also fails to set forth legally sufficient claims for cancellation of the mark SPIN MASTER and design.

Accordingly, respondent's motion to dismiss is granted, and the petition to cancel is dismissed with prejudice.

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administrative tribunal with jurisdiction over the issue of registrability only").