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

Proceeding	92050998
Party	Defendant Aguila Records Inc.
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musical recordings of the Durango genre.” On March 14, 2009, Petitioner filed a petition to cancel the aforementioned registration. Respondent then filed a Motion to Dismiss for Failure to State a Claim on June 22, 2009 (“Motion to Dismiss”). Petitioner filed its Response To Respondent’s Motion to Dismiss for Failure to State a Claim (“Response Motion”) on July 13, 2009.

Respondent’s Motion to Dismiss establishes that Petitioner has failed to plead sufficient facts to claim an ownership interest in any mark, even under the minimal standards of pleading applicable here. (Motion to Dismiss pg. 2). Petitioner has similarly failed to allege sufficient facts to properly plead standing. Nothing in Petitioner’s Response properly demonstrates that Petitioner has met the pleading standards applicable here, and Respondent accordingly requests that the Board dismiss this cancellation with prejudice for a failure by Petitioner to state a claim upon which relief can be granted.

II. PETITIONER HAS FAILED TO MEET THE REQUIREMENTS FOR STATING A VALID CANCELLATION.

“A petitioner’s allegations alone do not establish standing....A party’s pleading lays the foundation for standing. Thus, if it does not plead facts sufficient to show a personal interest in the outcome beyond that of the general public, the case may be dismissed for failure to state a claim.” *Lipton Indus. v. Ralston Purina Co.*, 670 F.2d 1024, 1028 (C.C.P.A. 1982). A party is not entitled to standing solely because of the allegations in their petition but instead the party’s allegations must meet threshold requirements in order to survive. *Id.* Petitioner is obligated to “provide the grounds of his entitle[ment] to relief” with more than mere conclusions or a “formulaic recitation of

a cause of action.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 547 (2007). “Factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all of the complaint’s allegations are true.” *Id.*

In the instant matter, Petitioner has not plead sufficient facts to raise a right to relief above the speculative level that he, as an individual, has a real interest in the outcome of this matter or a reasonable basis for belief of damage. Petitioner, instead, offers unsupported allegations and formulaic recitations of claims of action. The petition is, therefore, insufficient and must be dismissed.

a. Petitioner has not shown a real interest in the proceeding.

Any person who believes he or she will be damaged by a mark must show a “real interest” in the proceeding and a “reasonable basis for his belief of damage” in order to have standing to file an opposition or cancellation proceeding. *Ritchie v. Simpson*, 170 F.3d 1092, 1095 (Fed. Cir. 1999).

Petitioner asserts that it does have a “real interest” in this proceeding because Petitioner is allegedly an original member of the musical group ALACRANES MUSICAL, because Petitioner is purportedly the owner of the group, and because ownership of a registration is not necessary to establish standing. (Response Motion pgs. 3, 4). However, Petitioner’s statements that he allegedly “owns” a musical group ALACRANES MUSICAL are lacking any factual detail and are plainly insufficient. Such conclusory assertions alone do not establish Petitioner’s real interest in this proceeding. Even if the petition contains facts sufficient to establish standing for as claimed unincorporated legal association (Alacranes Musical), Petitioner has failed to plead facts sufficient to establish standing for himself, as an individual. *Societe Civil Des*

Domaines Dourthe Feres v. S.A. Consortium Vincole De Bordeaux, 6 U.S.P.Q.2d 1205, 1207-8 (T.T.A.B. 1988).

Indeed, the petition lacks sufficient facts to meet the appropriate standard for establishing a “real interest” in the cancellation. “Pursuant to the ‘real interest’ requirement, to have standing an opposer to a registration is required to have a legitimate *personal* interest in the opposition....In other words, the opposer must have a *direct and personal* stake in the outcome of the opposition.” *Ritchie*, 170 F.3d at 1095 (citations omitted) (emphasis added). Petitioner appears to be attempting to claim that has a direct and personal interest though “ownership” of the mark in question. However, the petition fails to show a direct use by the Petitioner and is deficient of facts to support the Petitioner’s claim of ownership. Petitioner’s claims of ownership “represents a kind of ‘bootstrapping’ under which, rather than directly asserting trademark ownership and rights, a party merely states that it has authorized others to use a mark and expects that this will establish the legitimacy or basis of its authority to do so.” *Compuclean*, 1 U.S.P.Q.2d 1323, at 1326. (Petition for Cancellation para. 6).

Petitioner also attempted to plead that he has a direct and personal interest in the cancellation because of prior use. The petition, however, fails to plead sufficient facts of this alleged use by the Petitioner, i.e. the who, what, where and when of the alleged use. The petition must fail as conclusory because although Petitioner attempts to assert previous use of an identical mark, he fails to plead facts that connect the Petitioner with the use of the mark in a way that demonstrates a real interest. *Compuclean Marketing and Design v. Berkshire Prods., Inc.*, 1 U.S.P.Q.2d 1323, 1325 (T.T.A.B. 1986).

Accordingly, the petition for cancellation must fail because it does not contain sufficient facts to establish a real interest on behalf of the Petitioner.

b. Petitioner has not shown a reasonable basis for his belief of damage.

In its Response Motion, Petitioner points to paragraph 11 of the petition as its only support for a “reasonable basis” for his belief of damage. (Response Motion pg. 4).

Paragraph 11 of the petition reads:

Petitioner will be damaged by the continued use and registration by Respondent of the mark “Alacranes Musical” as set forth in Respondent’s Registration No. 3,170,684 because a) Respondent’s alleged mark is confusingly similar to Petitioner’s “Alacranes Musical” mark for said goods; and b) such continued use and registration would support and assist Respondent in the confusing, misleading, and deceptive use of Petitioner’s mark and would give to Respondent color of exclusive statutory rights to such designation in violation of Petitioner’s superior rights.

This unsupported and conclusory statement is not sufficient to establish a reasonable basis for Petitioner’s belief that he will be damaged. This statement is akin to claim of a likelihood of confusion that, alone, cannot establish standing as it is merely a formulaic recitation of the elements of a cause of action. *Twombly*, 550 U.S. 544 at 547. “The belief must have a ‘reasonable basis in fact’ and is, therefore, more than a ‘subjective belief.’” *Id.* The Petitioner has not provided any alleged facts to support its subjective belief that it will be harmed. Again, the Petitioner relies on bald assertions to support its petition for cancellation, without providing any facts in reliance thereof. Accordingly, the petition for cancellation must fail because there are insufficient facts pled to establish a reasonable basis for belief of damage.

III. AS A LEGAL REPRESENTATIVE, PETITIONER IS AN IMPROPER PARTY TO ASSERT STANDING

In the Motion to Dismiss, Respondent called attention to Petitioner's inability to assert standing as the legal representative for the unincorporated legal association, Alacranes Musical. (Motion to Dismiss pg. 3). Petitioner has not addressed this issue in its Response Motion. Instead, Petitioner attempts to exclude from consideration an exhibit to the Motion to Dismiss on the bases that it referenced matters outside the pleadings. (Response Motion pg. 5). Petitioner cannot divorce itself from binding admissions that foreclose Petitioner's ability to pursue any remedy here by claiming that such statements must be disregarded at the pleading stage. Accordingly, Exhibit A to the cancellation demonstrates that Petitioner is an improper party to this cancellation consistent with the arguments herein.

IV. CONCLUSION

The petition is insufficient as it has not provided any facts on which standing can be based. The petition has also failed to provide sufficient detail from which Petitioner can claim a real interest in the proceeding or a reasonable basis for his belief of damage. As such, Petitioner has failed to show that it has any personal interest in the outcome of this cancellation proceeding. Accordingly, the Petition for Cancellation is deficient and should be dismissed.

Dated: 7/28/09

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