

**THIS DECISION IS NOT A
PRECEDENT OF THE TTAB**

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Mailed: September 30, 2015

Opposition No. **91200616 (parent)**
Cancellation No. **92053622**

UMG Recordings, Inc.

v.

Siggy Music, Inc.

**Before Kuhlke, Mermelstein and Adlin,
Administrative Trademark Judges.**

By the Board:

This consolidated matter comes up on Opposer/Petitioner UMG Recordings, Inc.'s (hereinafter "UMG") motion for summary judgment on its claims of non-use and likelihood of confusion (filed March 4, 2015) and Applicant/Respondent Siggy Music, Inc.'s (hereinafter "Siggy") cross-motion for summary judgment on UMG's likelihood of confusion claim as well as Siggy's asserted defenses of laches, acquiescence and estoppel, including contractual estoppel (filed March 6, 2015). The motions are fully briefed.¹

The Board presumes the parties' familiarity with the pleadings, the history of the proceedings and the arguments and evidence submitted with respect to the cross-motions. Furthermore, due to the substantial redactions

¹ A stipulated briefing schedule was filed by the parties on March 27, 2015, and approved by the Board on April 7, 2015.

in the parties' filings, this order will not summarize the proceeding background or recount the parties' arguments except as necessary.

Decision

A motion for summary judgment is a pretrial device intended to save the time and expense of a full trial when the moving party is able to demonstrate, prior to trial, that there is no genuine dispute of material fact, and that it is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Opryland USA Inc. v. Great Am. Music Show Inc.*, 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992); and *Sweats Fashions Inc. v. Pannill Knitting Co. Inc.*, 833 F.2d 1560, 4 USPQ2d 1793 (Fed. Cir. 1987). Where, as here, the parties have filed cross-motions for summary judgment, each party has the initial burden of demonstrating the absence of any genuine dispute of material fact with respect to its own motion. *See Univ. Book Store v. Univ. of Wisconsin Bd. of Regents*, 33 USPQ2d 1385 (TTAB 1994). If the moving party is able to meet this initial burden, the burden shifts to the nonmoving party to demonstrate the existence of specific genuinely disputed facts that must be resolved at trial.² The nonmoving party may not rest on mere allegations or assertions but must designate specific portions of the record or produce additional evidence showing the existence of a genuine dispute of material fact for trial. Should

² That cross-motions for summary judgment on a claim have been filed does not necessarily mean that there is no genuine dispute as to a material fact and that trial is unnecessary. *See* 10A Wright, Miller, Kane, Marcus & Steinman, *Fed. Prac. & Proc. Civ.* § 2382 (3d ed. 2015).

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the nonmoving party fail to raise a genuine dispute of material fact as to an essential element of the moving party's case, judgment as a matter of law may be entered in the moving party's favor.

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 Olde Tyme Foods, Inc. v. Roundy's, Inc.*, 961 F.2d 200, 22 USPQ2d 1542, 1544 (Fed. Cir. 1992). The evidence must be viewed in a light most favorable to the non-moving party, and all reasonable inferences are to be drawn in the non-movant's favor. *Lloyd's Food Prods., Inc. v. Eli's, Inc.*, 987 F.2d 766, 25 USPQ2d 2027, 2029 (Fed. Cir. 1993); *Opryland USA, supra*. The Board does not resolve disputes of material fact but rather only ascertains whether disputes of material fact exist. *See Lloyd's Food Prods.*, 987 F.2d at 767, 25 USPQ2d at 2029; *Olde Tyme Foods*, 961 F.2d at 200, 22 USPQ2d at 1542.

Upon careful consideration of the arguments and evidence presented by the parties, and drawing all inferences with respect to each party's motion in favor of the nonmoving party, we find that neither party has demonstrated the absence of a genuine dispute of material fact. At a minimum, genuine disputes of material fact remain as to the applicability and effect of the 1969 and 1980 agreements, the ownership and scope of use of the J5 mark by Siggy's predecessor-in-interest, UMG's ownership and use of its pleaded marks and their similarity to Siggy's marks, and the relatedness of the

parties' goods. In view thereof, UMG's motion for summary judgment and Siggy's cross-motion for summary judgment are hereby **DENIED**.³

Proceedings herein are **RESUMED**. No further motions for summary judgment will be entertained and the parties are hereby ordered to proceed to trial. Dates are **RESET** as follows:

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| Plaintiff's Pretrial Disclosures Due | 10/23/2015 |
| Plaintiff's 30-day Trial Period Ends | 12/7/2015 |
| Defendant's Pretrial Disclosures Due | 12/22/2015 |
| Defendant's 30-day Trial Period Ends | 2/5/2016 |
| Plaintiff's Rebuttal Disclosures Due | 2/20/2016 |
| Plaintiff's 15-day Rebuttal Period Ends | 3/21/2016 |

IN EACH INSTANCE, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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³ The parties are reminded that evidence submitted in support of or in opposition to a motion for summary judgment is of record only for consideration of that motion. Any such evidence to be considered at final hearing must be properly introduced during the appropriate trial period. *See, e.g., Levi Strauss & Co. v. R. Joseph Sportswear Inc.*, 28 USPQ2d 1464 (TTAB 1993).