

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

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Mailed: March 16, 2012

Cancellation No. 92054050

Univision Communications Inc.

v.

Unimundo Corp.

Before Grendel, Wellington, and Kuczma, Administrative Trademark Judges:

By the Board:

This case comes up on the motion of respondent Unimundo Corp., acting pro se, to dismiss the petition to cancel pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim, and petitioner Univision Communications Inc.'s motion to strike respondent's reply brief on the motion. Both motions are contested. The delay in acting upon this matter is regretted.

On December 14, 2010, Registration No. 3889485 issued to Unimundo Corp. (hereafter, Unimundo) for the mark UNIMUNDO for "television and Internet broadcasting", alleging March 28, 2010 as the date of first use and first use in commerce. On May 26, 2011, Univision Communications Inc. (hereafter, Univision) filed a petition to cancel Registration No. 3889485 on the grounds of

priority and likelihood of confusion, dilution, and fraud. On June 30, 2011, respondent filed a motion to dismiss the petition to cancel for failure to state a claim.¹ Petitioner opposed the motion, and respondent filed a reply brief.

Trademark Rule 2.127(a) provides "A reply brief shall not exceed ten pages in length in its entirety." Respondent's reply brief comprises 12 pages, accompanied by an ESTTA cover sheet. Accordingly, the reply brief has not been considered. *Mattel, Inc. v. The Brainy Baby Company, Llc*, 101 USPQ2d 1140, 1141 (TTAB 2011).²

To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949 (2009) quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The pleading is sufficient if it alleges plausible facts as would, if proved, establish that plaintiff is entitled to the relief sought, that is, that 1) plaintiff has standing to maintain the proceeding,

¹ Respondent filed its motion three times (Docket entry #4-6). Respondent is ordered to file only a single copy of any paper.

² We find unpersuasive petitioner's additional argument that respondent served the reply brief by email in violation of the Board's July 13, 2011 suspension order. The certificate of service describes respondent's deposit in first class mail, which comports with the Board's service requirements, and a courtesy email copy. Where, as here, the parties do not agree to exclusive email service the Board welcomes the voluntary provision of a courtesy email copy, which ensures that relevant information is communicated promptly.

and 2) a valid ground exists for denying or cancelling the registration. See *Young v. AGB Corp.*, 152 F.3d 1377, 47 USPQ2d 1752, 1755 (Fed. Cir. 1998).

The petition to cancel alleges (¶¶1-2, 10) that petitioner is the leading Spanish language media company in the United States and owns a family of U and UNIVISION marks, including 15 pleaded registrations, and that Unimundo's registration is likely to cause confusion with petitioner's UNIVISION and U marks. A claim of likelihood of confusion that is not wholly without merit is a sufficient pleading of standing. *Metromedia Steakhouses, Inc. v. Pondco II Inc.*, 28 USPQ2d 1205, 1209 (TTAB 1993).

Inasmuch as the petition to cancel alleges (Subtitle C) that respondent's mark "is likely to cause consumer confusion with petitioner's registered and senior marks", the claim under Trademark Act Section 2(d) is legally sufficient.³ *Petroleos Mexicanos v. Intermix S.A.*, 97 USPQ2D 1403, 1407 (TTAB 2010). Similarly, the petition to cancel alleges (¶¶13-15) that petitioner's registered marks became famous long before

³ We reject respondent's argument that the petition improperly asserts (¶10) third party rights in the likelihood of confusion claim: In a baldly crude fashion, registrant has attempted to get a free ride by combining Petitioner's Registered Marks with the name of the second largest Spanish language television broadcaster in the US - Telemundo. The allegation merely adds detail to petitioner's claim; the Board will address likelihood of confusion only with respect to registrant's UNIMUNDO and petitioner's pleaded UNIVISION and U marks.

registrant filed its application for the mark, and that registrant's use of the mark is likely to cause dilution by blurring and by tarnishment, and these allegations are sufficient to state a legally sufficient dilution claim under Trademark Act Section 43(c). *Fiat Grp. Automobiles S.p.A. v. ISM Inc.*, 94 USPQ2d 1111, 1113 (TTAB 2010).

With respect to fraud, the petition alleges (¶4) that Unimundo applied to register UNIMUNDO for television and internet broadcasting, averring that the UNIMUNDO mark was in use as of the filing date of the application; (¶7) that upon information and belief, the UNIMUNDO mark has not been used as alleged in the declaration; that (¶8) upon information and belief, Unimundo's verified statements contain "knowingly false material representations of fact, and therefore constitute fraud in the procurement of a registration"; and that (¶9) "But for these material and willful representations, the Mark would not have been registered."

Contrary to petitioner's argument, the allegation on information and belief that respondent knowingly filed false material representations of fact in its application does not set forth the necessary fraudulent intent. "Pleadings of fraud made 'on information and belief,' when there is no allegation of 'specific facts upon which the belief is reasonably based' are insufficient." *Asian and Western Classics B.V. v. Lynne Selkow*,

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92 USPQ2d 1478, 1479 (TTAB 2009). Compare Meckatzer Löwenbräu Benedikt Wei KG v. White Gold, LLC, 95 USPQ2d 1185, 1187 (TTAB 2010) ("Its allegations are not based solely on "information and belief," but are also based on the results of an investigation which, petitioner alleges, revealed that respondent was not using its mark on all of the goods listed in its Statements of Use at the time the Statements of Use were filed"). Respondent's motion to dismiss is granted with respect to the pleading of fraud.

Proceedings herein are resumed. Petitioner is allowed until TWENTY DAYS from the mailing date of this order to file, if it wishes, an amended petition to cancel including a newly pleaded fraud claim; respondent is allowed until TWENTY DAYS from the date of service of an amended petition to cancel to file its answer to the amended petition. In the event that petitioner does not file an amended petition to cancel, respondent is allowed until FORTY DAYS from the mailing date of this order to file its answer to the original petition to cancel (except respondent does not have to answer ¶¶4-9 addressing the insufficient fraud claim).

A legally sufficient answer to the petition to cancel which complies with Rule 8(b) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Trademark Rule 2.116(a), requires the following:

A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder.

The petition to cancel consists of numbered paragraphs setting forth the basis of petitioner's claim of damage. In accordance with Fed. R. Civ. P. 8(b) it is incumbent on respondent to answer the petition to cancel by admitting or denying the allegations contained in each paragraph. If respondent is without sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, it should so state and this will have the effect of a denial.

While Patent and Trademark Rule 10.14 permits any person to represent itself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in inter partes proceedings before the Board to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney. Strict compliance with the Trademark

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Rules of Practice and where applicable, the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel. *McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, 1212 (TTAB 2006).

Dates are reset below:

Deadline for Discovery Conference	5/25/2012
Discovery Opens	5/25/2012
Initial Disclosures Due	6/24/2012
Expert Disclosures Due	10/22/2012
Discovery Closes	11/21/2012
Plaintiff's Pretrial Disclosures Due	1/5/2013
Plaintiff's 30-day Trial Period Ends	2/19/2013
Defendant's Pretrial Disclosures Due	3/6/2013
Defendant's 30-day Trial Period Ends	4/20/2013
Plaintiff's Rebuttal Disclosures Due	5/5/2013
Plaintiff's 15-day Rebuttal Period Ends	6/4/2013

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 the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 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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