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

RK

Mailed: September 6, 2012

Cancellation No. **92054617**

Nouvelle Parfumerie Gandour

v.

Y.Z.Y., Inc.

Before Seeherman, Taylor and Lykos,
Administrative Trademark Judges

By the Board:

This matter comes up on respondent's motion (filed January 13, 2012) to dismiss the petition to cancel for lack of standing. The motion is fully briefed.

To allege standing, a petitioner need only make allegations that, if proved, would demonstrate that it has a "real interest," i.e., a direct and personal stake, in the outcome of the proceeding and a reasonable basis for its belief of damage. *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1025 (Fed. Cir. 1999).

By way of its motion, respondent argues that the petition only alleges use of the mark by petitioner outside the United States, that such foreign use is irrelevant to a

claim of ownership in the United States, and therefore petitioner is unable to assert a claim greater than that which can be asserted by the general public and so is merely an intermeddler. We disagree.

In the petition for cancellation, petitioner has pleaded that it created the BIO CLAIRE mark, i.e., the same mark that respondent has registered, on or around February 2001 in the Ivory Coast and Cameroon (¶ 2), that respondent is a distributor of petitioner and began ordering Bio Claire Lightening Body Cream product from petitioner on or about October 2001 (¶ 3), and that the parties understood that the mark was owned by petitioner and that respondent "was simply to serve as an importer and distributor" of the goods (¶ 3). As between a foreign manufacturer and a United States distributor, the foreign manufacturer is presumed, absent evidence to the contrary, to be the owner of the mark in the United States. *See Sengoku Works Ltd. v. RMC International Ltd.*, 40 USPQ2d 1149 (9th Cir. 1996); *Bakker v. Steel Nurse of America Inc.*, 176 USPQ 447 (TTAB 1972). In view thereof, petitioner has made allegations that would, if proven, show that it is more than a mere intermeddler. Accordingly, we find that petitioner has properly pleaded its standing to bring this proceeding and respondent's motion to dismiss is hereby **DENIED**.

Proceedings herein are **RESUMED**, and dates are **RESET** as follows:

Time to Answer	**10/12/2012**
Deadline for Discovery Conference	**11/11/2012**
Discovery Opens	**11/11/2012**
Initial Disclosures Due	**12/11/2012**
Expert Disclosures Due	**4/10/2013**
Discovery Closes	**5/10/2013**
Plaintiff's Pretrial Disclosures Due	**6/24/2013**
Plaintiff's 30-day Trial Period Ends	**8/8/2013**
Defendant's Pretrial Disclosures Due	**8/23/2013**
Defendant's 30-day Trial Period Ends	**10/7/2013**
Plaintiff's Rebuttal Disclosures Due	**10/22/2013**
Plaintiff's 15-day Rebuttal Period Ends	**11/21/2013**

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.l25.

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.l29.

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