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

Proceeding	92055588
Party	Plaintiff Federation Internationale de Football Association (FIFA)
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Submission	Opposition/Response to Motion
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Date	06/08/2012
Attachments	2012-6-8 Opposition to Motion to Dismiss 92055588 re US RN 4127208.pdf (5 pages)(497304 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Fédération Internationale de Football Association (FIFA)	)	
Opposer,	)	Opposition No. 92055588
v.	)	Reg. No. 4127208
Orlando A. Herrera, Constance Goldmeer, The World Peace Program, LLC,	)	
Registrants.	)	

PETITIONER'S OPPOSITION TO REGISTRANTS' MOTION TO DISMISS

On June 7, 2012, Registrants filed both an Answer to the Petition to Cancel Reg. No. 4127208 and a Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted.

The basis for the Motion to Dismiss is that Petitioner does not have standing to seek the cancellation of the subject registration because its belief that it is or will be damaged by the existence of the subject registration is based only on a subjective belief.

In order to withstand a motion to dismiss, a petitioner need only allege such facts which, if proved, would establish that petitioner is entitled to the relief sought; that is, (1) petitioner has standing to bring the proceeding, and (2) a valid statutory ground exists for cancelling the registration. *Fair Indigo LLC v. Style Conscience*, 85 USPQ2d 1536, 1538 (TTAB 2007). In the

Motion to Dismiss, Registrants only challenge whether Petitioner has standing to bring the proceeding and do not challenge whether a valid statutory ground exists for cancelling the registration.

"Standing is the more liberal of the two elements and requires only that the party seeking cancellation believe that it is likely to be damaged by the registration." *Cunningham v. Laser Golf Corp.*, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000). When determining the sufficiency of a petitioner's pleading of standing, the Board must decide whether the petition for cancellation alleges sufficient facts to show petitioner has a real interest in the outcome of the proceeding. *See Ritchie v. Simpson*, 50 USPQ2d 1023, 1025 (Fed. Cir. 1999); There is no requirement that actual damage be pleaded; only that adequate allegations be made to demonstrate a reasonable basis for a belief on the part of petitioner that it will be damaged. *See Lipton Indus., Inc. v. Ralston Purina Co.*, 213 USPQ 185, 187 (CCPA 1982); *Bromberg v. Carmel Self Service, Inc.*, 198 USPQ 176 (TTAB 1978). "A belief in likely damage can be shown by establishing a direct commercial interest." *Cunningham*, *supra*.

In Paragraph 10 of the Petition to Cancel, Petitioner alleged that it "owns and uses in commerce the mark WORLD CUP, and formatives thereof, in connection with a wide variety of goods and services and the continued existence of Reg. No. 4127208 for the mark THE WORLD PEACE CUP may limit Petitioner's ability to use and register its WORLD CUP mark and formatives thereof."

In assessing a motion to dismiss, the Board must accept as true all of the petitioner's well-pleaded allegations, and it must construe the complaint in the light most favorable to the petitioner. *See Advanced Cardiovascular Sys. Inc. v. SciMed Life Sys. Inc.*, 26 USPQ2d 1038,

1041 (Fed. Cir. 1993); *McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212 (TTAB 2006), aff'd, unpublished No. 07-110 (Fed. Cir. July 11, 2007). Additionally, under the simplified notice pleading rules of the Federal Rules of Civil Procedure, the allegations of a complaint should be "construed so as to do justice." Fed. R. Civ. P. 8(e); *Scotch Whisky Ass'n v. U.S. Distilled Prods. Co.*, 21 USPQ2d 1145, 1147 (Fed. Cir. 1991).

The allegations set forth in the Petition to Cancel clearly demonstrate that Petitioner has a reasonable basis for its belief that it is or will be damaged. Petitioner has a real and direct commercial interest in its own marks and a reasonable basis for its belief that it would be damaged because the registration may limit Petitioner's ability to use and register its marks that consist of or include the wording WORLD CUP. Thus, Petitioner's belief that it will be damaged has some reasonable basis in fact and is, therefore, more than a subjective belief. *See Ritchie*, *supra* at 1027.

Lastly, Petitioner notes that "[i]n determining the requirements for standing, we have taken into consideration that no *ex parte* vehicle for removing "dead" registrations from the register is provided in the statute except for the provisions of Section 8 (15 U.S.C. § 1058) requiring an affidavit or declaration of use to be filed during the sixth year of its term. There is no procedure for the Commissioner of Patents and Trademarks to initiate action against defunct marks which appear in registrations. Thus, we believe the public interest is served, contrary to appellant's view, in broadly interpreting the class of persons Congress intended to be allowed to institute cancellation proceedings." *Lipton*, *supra* at 190 citing *Universal Oil Prod. Co. v. Rexall Drug & Chem. Co.*, 174 USPQ 458, 459-60 (CCPA 1972).

Petitioner avers that it has standing to request the cancellation of the subject registration

and requests that the Motion to Dismiss be denied.

Respectfully submitted,

Fédération Internationale de Football Association (FIFA)

Dated: June 8, 2012 By:

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing "PETITIONER'S OPPOSITION TO REGISTRANTS' MOTION TO DISMISS" was served on Registrants, Orlando A. Herrera, Constance Goldmeer, The World Peace Program, LLC, at the address of record 2751 South Ocean Drive, Suite 805-S, Hollywood, FL 33019, via first class mail, postage prepaid, today **June 8, 2012**.

By: _____
Laura K Greer