

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

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Mailed: July 6, 2012

Cancellation No. 92055588

Federation Internationale de  
Football Association (FIFA)

v.

Orlando A. Herrera,  
Constance Goldmeer and  
The World Peace Program, LLC

By the Board:

Respondents own a Supplemental Register registration for the mark THE WORLD PEACE CUP (standard characters) for the following International Class 41 services:

organizing sporting events, namely, soccer competition, basketball competition, football competition, Tennis tournaments, golf tournaments, and any other major sport competition which provide for a portion of the ticket proceeds to be utilized for world peace, humanitarian aid and veteran help efforts.<sup>1</sup>

Petitioner filed a petition to cancel said registration, on the grounds of (1) abandonment under Trademark Act § 14, and (2) nonuse of the mark (identified on the electronic filing cover sheet as: "Mark does not meet

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<sup>1</sup> Registration No. 4127208, registered April 10, 2012, from an application filed December 10, 2011 based on use in commerce under Trademark Act § 1(a), asserting a date of first use anywhere, and date of first use in commerce of September 1, 2011.

the requirements of Section 1(a) nor Section 23(a) of the Trademark Act.”)

Respondents filed an answer, and concurrently therewith filed a motion to dismiss the petition for failure to state a claim upon which relief can be granted, wherein they challenge petitioner’s standing.<sup>2</sup>

Accordingly, this proceeding is before the Board for consideration of respondents’ motion to dismiss. The motion has been fully briefed.

Analysis

A motion to dismiss for failure to state a claim upon which relief can be granted is a test solely of the legal sufficiency of a complaint. To survive a motion to dismiss, a plaintiff need only allege sufficient factual matter as would, if proved, establish that (1) the plaintiff has standing to maintain the proceeding, and (2) a valid ground exists for opposing or cancelling the mark. *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 187 (CCPA 1982). See also TBMP § 503.02 (3d ed. rev. 2012).

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<sup>2</sup> All motions and briefs submitted to the Board must be double-spaced in compliance with Trademark Rule 2.126(a)(1). The two filings fail to comply with this rule. The Board may decline to consider any further papers filed by respondents herein which are not in compliance.

Respondents’ motion to dismiss is timely. See TBMP § 503.01 (3d ed. rev. 2012).

Specifically, "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, 678 (2009), quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). In the context of inter partes proceedings before the Board, a claim has facial plausibility when the opposer or petitioner pleads factual content that allows the Board to draw a reasonable inference that the opposer or petitioner has standing and that a valid ground for the opposition or cancellation exists. *Cf. Twombly*, 550 U.S. at 556. The pleading must be examined in its entirety, construing the allegations therein so as to do justice. Fed. R. Civ. P. 8(e); see also *Otto Int'l Inc. v. Otto Kern GmbH*, 83 USPQ2d 1861, 1862 (TTAB 2007).

#### Standing

At the pleading stage, all that is required to establish standing is that petitioner allege facts sufficient to show a "real interest" in the proceeding and a "reasonable basis" for its belief of damage. To plead a "real interest" in the case, petitioner must allege a "direct and personal stake" in the outcome of the proceeding, and the allegations in support of its belief of damage must have a reasonable basis in fact. See *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1027 (Fed. Cir. 1999); see also *Lipton Industries, Inc. v. Ralston Purina*

Cancellation No. 92055588

Co., 670 F.2d 1024, 213 USPQ 185, 189 (CCPA 1982), and TBMP § 309.03(b) (3d ed. rev. 2012).

A party may base its standing on an assertion of common law use of a mark. See, e.g., *Giersch v. Scripps Networks Inc.*, 90 USPQ2d 1020, 1022 (TTAB 2009); *Wet Seal Inc. v. FD Mgt. Inc.*, 82 USPQ2d 1629, 1634 (TTAB 2007).

Petitioner asserts common law rights by way of Paragraph 10 of its petition, which reads as follows:

Petitioner is or will be damaged by the existence of Reg. No. 4127208. Specifically, Petitioner 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 may limit Petitioner's ability to use and register its WORLD CUP mark and formatives thereof.

Respondents' motion is sparse, but essentially argues that petitioner's allegations in support of its belief of damage "don't have a reasonable basis and are only subjective beliefs" (motion, p. 1).

The threshold for demonstrating standing is a low one. Nevertheless, petitioner's allegations lack a minimal degree of factual specificity. Whereas petitioner alleges that the challenged registration may limit its ability to use and register WORLD CUP and formatives thereof, it merely alleges use of WORLD CUP, and formatives thereof, "in connection with a wide variety of goods and services" (petition, Para. 10). Petitioner does not set forth, for example, the nature of its business and/or its business activities, the basis for its

commercial interest in the mark, its status as a competitor of respondents, or the nature of its use or any specific goods and/or services on which it alleges use of WORLD CUP or formatives thereof. Reading the pleading liberally for a determination of sufficiency, the pleading merely sets forth that petitioner uses WORLD CUP and formatives thereof in connection with unidentified goods and/or services, and that petitioner desires the ability to use and register its WORLD CUP mark. Therefore, petitioner fails to state allegations from which it can be concluded that its belief of damage has a "reasonable basis in fact." See *Ritchie v. Simpson*, 50 USPQ2d at 1027.

In view of these findings, petitioner has not alleged in this proceeding sufficient facts which, if proven, would establish its standing.

Grounds

The Board has reviewed the petition for a determination of the sufficiency of the grounds asserted.

In Paragraphs 3, 4, 5, 6, 8 and 9, petitioner sufficiently sets forth a claim of nonuse of the mark.

Turning to the next ground listed by petitioner, to sufficiently state a claim for abandonment of a registered mark, a petitioner must allege that the mark has been abandoned due to nonuse with intent not to resume use; nonuse for three consecutive years shall be prima facie

Cancellation No. 92055588

evidence of abandonment. *See, e.g., Linville v. Rivard*, 41 USPQ2d 1731 (TTAB 1996), *aff'd*, 133 F.3d 1446, 45 USPQ2d 1374 (Fed. Cir. 1998); *Imperial Tobacco Ltd. v. Philip Morris Inc.*, 899 F.2d 1575, 14 USPQ2d 1390 (Fed. Cir. 1990); *Otto International Inc. v. Otto Kern GmbH*, 83 USPQ2d at 1863.

Inasmuch as petitioner has not alleged that the mark has been abandoned due to nonuse with intent not to resume use (or nonuse for three consecutive years), its abandonment claim is insufficiently pleaded.

In summary, petitioner has not sufficiently pleaded its standing, and has sufficiently pleaded one ground (nonuse) for cancellation of respondents' mark THE WORLD PEACE CUP. In view of the finding that petitioner has not sufficiently pleaded the essential threshold element of standing, respondents' motion to dismiss is hereby granted.

Leave to amend

Upon granting a motion to dismiss, the Board generally will allow the plaintiff an opportunity to file an amended pleading, as appropriate. *See* TBMP § 503.03 (3d ed. rev 2012). Inasmuch as the Board finds it appropriate to do so here, petitioner is allowed until thirty (30) days from the mailing date of this order in which to file an amended petition to cancel which sufficiently sets forth its standing, failing which this proceeding will be dismissed

Cancellation No. 92055588

for failure to state a claim upon which relief may be granted.<sup>3</sup> Respondents are allowed until thirty (30) days from the date of service of said amended petition in which to file an answer thereto.

Schedule

Proceedings are hereby resumed. Time to replead is allowed as indicated above. Conferencing, disclosure, discovery and trial dates are reset as follows:

Deadline for Required Discovery Conference	10/5/2012
Discovery Opens	10/5/2012
Initial Disclosures Due	11/4/2012
Expert Disclosures Due	3/4/2013
Discovery Closes	4/3/2013
Plaintiff's Pretrial Disclosures due	5/18/2013
Plaintiff's 30-day Trial Period Ends	7/2/2013
Defendant's Pretrial Disclosures due	7/17/2013
Defendant's 30-day Trial Period Ends	8/31/2013
Plaintiff's Rebuttal Disclosures due	9/15/2013
Plaintiff's 15-day Rebuttal Period Ends	10/15/2013

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

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<sup>3</sup> All parties, including pro se parties, are bound by Fed. R. Civ. P. 11, and Patent and Trademark Rule 11.18. See TBMP § 106.02 (3d ed. rev. 2012).

Petitioner may also elect to amend its abandonment claim, as appropriate.

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.

Information for pro se parties

While Patent and Trademark Rule 11.14 permits any person to represent itself, it is strongly recommended that a person who is not acquainted with the technicalities of the procedural and substantive law involved in inter partes proceedings before the Board 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.

Every motion, paper or communication filed with the Board must include proof of service of a copy on opposing counsel or party, in compliance with Trademark Rule 2.119(a) and (b). The Board may decline to consider any motion, paper or communication filed herein which does not include proof of service, such as a Certificate of Service. The Board's Manual of Procedure (TBMP) sets forth the following suggested format for a Certificate of Service:

I hereby certify that a true and complete copy of the foregoing (insert title of submission) has been served on (insert name of opposing counsel or party) by mailing said copy on (insert date of mailing), via First Class Mail, postage prepaid (or insert other appropriate method of delivery) to: (set out name and address of opposing counsel or party). See TBMP § 113.03 (3d ed. rev. 2012).

It is recommended that respondents be familiar with the Trademark Rules of Procedure (Chapter 37 of the Code of Federal Regulations, the Federal Rules of Civil Procedure that apply to Board proceedings (see Trademark Rule 2.116(a)), and the Board's Manual of Procedure (TBMP). Strict compliance with these authorities, as applicable, is required of all parties throughout all stages of an inter partes proceeding, whether or not they are represented by counsel. See *McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, n.2 (TTAB 2006). The Board's May 8, 2012 order instituting this proceeding also includes information with which respondents should be familiar.