

THIS OPINION
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UNITED STATES PATENT AND TRADEMARK
OFFICE

Trademark Trial and Appeal Board

P.O. Box 1451

Alexandria, VA 22313-1451

REA/DUNN

Mailed: August 22, 2014

Cancellation No. 92056634

Guru Beverage Co.

v.

Sagar Shah dba Nature's Guru

**Before Cataldo, Taylor, and Bergsman, Administrative Trademark
Judges:**

By the Board:

This case comes up on Guru Beverage Co.'s (hereafter, Petitioner) motion, filed May 12, 2014, for summary judgment on the pleaded claim of likelihood of confusion. The motion has been fully briefed.

Sagar Shah, doing business as "Nature's Guru," (hereafter, Respondent) owns a registration for the mark NATURE'S GURU in standard characters for "Powder and concentrates used in the preparation of sports beverages, fruit-flavored beverages and tea-flavored beverages" issued April 10, 2012 (Registration No. 4125408).

Petitioner filed a petition to cancel alleging likelihood of confusion with its marks GURU (Registration No. 2775940) and GURU ENERGY DRINK

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(ENERGY DRINK disclaimed; Registration No. 2789042), both for “Sports drinks, energy drinks and soft drinks.”

Respondent filed an answer denying the salient allegations of the petition to cancel.

As evidence in support of summary judgment, Petitioner submits on motion:

- 1) status and title copy of Reg. No. 2775940 for the mark GURU;
- 2) status and title copy of Reg. No. 2789042 for the mark GURU ENERGY DRINK;
- 3) a declaration from its corporate secretary, Joseph Zakher.

In response, Respondent’s evidentiary submission comprises:

- 1) status and title copy of Reg. No. 4125408 for the mark NATURE’S GURU;
- 2) an online dictionary definition for the word “guru”;
- 3) Respondent’s product listings from Amazon.com (www.Amazon.com);
- 4) copies of web pages from Respondent’s website (www.naturesguru.com);
- 5) copies of web pages from Petitioner’s web site;¹

¹ The Board will admit into evidence a document obtained from the Internet if it is publicly available and identifies its date of publication or the date it was accessed and printed, and its source (URL). *Safer, Inc. v. OMS Investments, Inc.*, 94 USPQ2d 1031, 1039 (TTAB 2010); TBMP §528.05(e). The website pages comprising Respondent’s Exhibit F do not set forth either the URLs or the dates on which the pages were accessed and printed. Accordingly, the website pages comprising

6) a declaration from the Registration owner, Sagar Shah.²

A party is entitled to summary judgment when it has demonstrated that there is no genuine dispute as to any material fact and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). In reviewing a motion for summary judgment, the evidentiary record and all reasonable inferences to be drawn from the undisputed facts must be viewed in the light most favorable to the nonmoving party. *Olde Tyme Foods Inc. v. Roundy's Inc.*, 961 F.2d 200, 22 USPQ2d 1542, 1544 (Fed. Cir. 1992). Likelihood of confusion depends on analysis of all of the probative facts in evidence that are relevant to the thirteen factors set forth in *In re E. I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), and we must refuse summary judgment if there are genuine disputes as to any of these factors which would be material to a decision on the merits.

Entry of summary judgment is not warranted here because, at a minimum, genuine disputes of material fact remain with respect to the strength of Petitioner's pleaded marks GURU and GURU ENERGY DRINK, and the similarities between the parties' marks, GURU, GURU ENERGY

Respondent's Exhibit F are inadmissible and have been given no consideration. However, the Board notes that the Respondent's evidence regarding the Petitioner's uses of Petitioner's marks on said website, even if it had been considered, would not change the outcome of this decision.

² 28 U.S.C. §1746 permits the use of a declaration under penalty of perjury whenever "any matter is required to be supported or permitted to be supported ... by the sworn oath, verification, or statement" of a person. To this end, Respondent's statement is accepted. *See Saint-Gobain Corp. v. 3M Co.*, 90 USPQ2d 1425, 1436 (TTAB 2007).

DRINK and NATURE'S GURU. In view thereof, Petitioner's motion for summary judgment is denied.³

The Respondent has indicated an interest in using ACR to resolve this dispute. (Resp't br. 5, n.1). The interest is commendable and both parties are encouraged to pursue ACR. While ACR cannot be used on a claim-by-claim basis, it can take almost any form that the parties agree to that will move this proceeding forward in an efficient and expeditious manner. The simplest form of ACR would be similar to summary judgment whereby the parties submit briefs with attached evidence, and agree to allow the Board to resolve any genuine disputes of material fact raised by the parties' filings or the record.

The parties are directed to the following materials which they may find helpful in crafting an ACR plan suitable for this proceeding:

1. General description of ACR:

TBMP §§ 528.05(a)(2) and 705 (2014); and

http://www.uspto.gov/trademarks/process/appeal/Accelerated_Case

Resolution ACR notice from TTAB webpage 12 22 11.pdf;

2. FAQs on ACR:

³ Although we have only mentioned a few genuine disputes of material fact in this decision, this is not to say that this is all that would necessarily be at issue for trial. The parties should note that evidence submitted in support of or in opposition to a motion for summary judgment is of record only for consideration of that motion or ACR in the event the parties stipulate thereto. Any such evidence to be considered at final hearing must be properly introduced in evidence during the appropriate trial period. *See Levi Strauss & Co. v. R. Joseph Sportswear Inc.*, 28 USPQ2d 1464 (TTAB 1993).

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[http://www.uspto.gov/trademarks/process/appeal/Accelerated Case Resolution \(ACR\) FAQ updates 12 22 11.doc](http://www.uspto.gov/trademarks/process/appeal/Accelerated_Case_Resolution_(ACR)_FAQ_updates_12_22_11.doc); and

3. List of cases employing ACR-like efficiencies:

[http://www.uspto.gov/trademarks/process/appeal/ACR Case List \(10-23-12\).doc](http://www.uspto.gov/trademarks/process/appeal/ACR_Case_List_(10-23-12).doc);⁴

4. Potential ACR schedules:

[http://www.uspto.gov/trademarks/process/appeal/TTAB ACR Options.jsp](http://www.uspto.gov/trademarks/process/appeal/TTAB_ACR_Options.jsp).

The parties are encouraged to contact the assigned interlocutory attorney if they have any questions or would like assistance in developing an ACR plan.⁵ However, unless the parties specifically agree to ACR, the Board's procedures remain in effect and the parties are subject to the scheduling dates as noted below.

Proceedings are resumed, and dates are reset as follows:

Plaintiff's Pretrial Disclosures	9/19/2014
Plaintiff's 30-day Trial Period Ends	11/3/2014
Defendant's Pretrial Disclosures	11/18/2014
Defendant's 30-day Trial Period Ends	1/2/2015
Plaintiff's Rebuttal Disclosures	1/17/2015
Plaintiff's 15-day Rebuttal Period Ends	2/16/2015

⁴ It may be helpful for the parties to review the docket entries and filings for these cases (accessible through TTABVue at <http://ttabvue.uspto.gov/ttabvue/>) to see the types of ACR and ACR-like efficiencies that parties have utilized in Board proceedings.

⁵ For further guidance, see *Chanel Inc. v. Makarczyk*, 106 USPQ2d 1774 (TTAB 2013).

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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.