

**This Opinion is Not a
Precedent of the TTAB**

Mailed:
May 15, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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2156775 Ontario Inc.

v.

GI Group, Inc.
—

Cancellation No. 92058047
—

Ronald E. Shapiro of Shapiro and Silverstein PLLC,
for 2156775 Ontario Inc.

John A. James of Law Offices of John A. James,
for GI Group, Inc.

—
Before Cataldo, Wellington, and Hightower,
Administrative Trademark Judges.

Opinion by Hightower, Administrative Trademark Judge:

Petitioner 2156775 Ontario Inc. seeks cancellation of Respondent GI Group, Inc.'s registration for the mark STARZ (in standard characters) for beer and lager¹ on the ground that the underlying application was void.²

¹ Registration No. 3624412, issued May 19, 2009 from an application filed May 15, 2008.

² Petitioner also pleaded a claim of fraud but has elected not to pursue that ground. Petitioner's Brief at 1 n.1, 6 TTABVUE 5.

In its answer, Respondent failed to either assert a general denial of the allegations in the petition for cancellation or to directly respond to each of its numbered paragraphs. *See* FED. R. CIV. P. 8(b); *Thrifty Corp. v. Bomax Enters.*, 228 USPQ 62, 63 (TTAB 1985) (requiring answer specifically admitting or denying allegations contained in each numbered paragraph of pleading); Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 311.02(a) (2014).

We first consider whether there are any admissions in Respondent's answer as to Petitioner's standing. In the absence of an admission or stipulation, it is incumbent on Petitioner to establish its standing, a threshold issue that must be proven by the plaintiff in every *inter partes* case. *See Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1025 (Fed. Cir. 1999); *Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F. 2d 1024, 213 USPQ 185, 188 (CCPA 1982); *John W. Carson Found. v. Toilets.com Inc.*, 94 USPQ2d 1942, 1945 (TTAB 2010). A party has standing to seek cancellation of a registration if the party believes it is likely to be damaged by the registration. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000). Proof that Petitioner filed an application that was rejected because of Registrant's registration would be sufficient. *Lipton*, 213 USPQ at 189.

In this case, Petitioner alleged that its own application to register the mark STAR for beer has been refused due to a likelihood of confusion with Respondent's registration and that it has appealed that refusal.³ Petitioner also asserted in its

³ Petition ¶¶ 2-4, 1 TTABVUE 3-4.

brief that its appeal has been suspended pending disposition of this proceeding.⁴ Unless they are admitted by a party opponent, however, statements made in briefs and pleadings cannot be considered as evidence on behalf of the party making them; such statements must be established by competent evidence at trial. *Saul Zaentz Co. v. Bumb*, 95 USPQ2d 1723, 1725 n.7 (TTAB 2010).

Despite the shortcomings in Respondent's answer, we find that Respondent did not admit Petitioner's standing.⁵ The only evidence Petitioner submitted was Respondent's discovery responses.⁶ Petitioner states in its brief that the file of its application also is of record.⁷ That is incorrect. Although the file of Respondent's registration "forms part of the record of the proceeding without any action by the parties," Petitioner's application does not. Trademark Rule 2.122(b), 37 C.F.R. § 2.122(b); TBMP 704.03(b)(2). Petitioner has introduced no evidence regarding its application or otherwise establishing its direct commercial interest in this proceeding. Petitioner's failure to prove standing is a sufficient basis to dismiss the proceeding, and we dismiss Petitioner's claims on that basis alone. *See Lumiere Prods., Inc. v. Int'l Tel. & Tel. Corp.*, 227 USPQ 892, 893 (TTAB 1985).

Decision: The petition to cancel is dismissed with prejudice.

⁴ Petitioner's Brief at 1, 6 TTABVUE 5.

⁵ *See Answer at 1 ¶ 1, 4 TTABVUE 2* (stating that "Respondent has no knowledge of Petitioner, their proposed products . . . or any other facts regarding Petitioner's allegations of filing of application(s) and/or appeals"). Respondent did not file a trial brief.

⁶ Petitioner's Notice of Reliance, 5 TTABVUE.

⁷ Petitioner's Brief at 2, 6 TTABVUE 6.