

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Alexandria, VA 22313-1451
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Mailed: July 15, 2015

Cancellation No. **92060602**

V.V.V. & Sons Edible Oils Limited

v.

*Meenakshi Overseas LLC d/b/a
Meenakshi Overseas¹*

**Before Zervas, Wellington and Adlin,
Administrative Trademark Judges**

By the Board:

On December 23, 2014, V.V.V. & Sons Edible Oils Limited (hereinafter “VVV”) served and filed a petition to cancel three of Meenakshi Overseas LLC’s (“Meenakshi”) registrations, i.e., Registration Nos. 4006654², 4225172³,

¹ Meenakshi’s change of correspondence address (filed January 9, 2015) has been noted and entered.

² For IDHAYAM in standard characters for “sesame oil” in International Class 29. Underlying Application Serial No. 77747207 was filed by Anil Gandhi (“Gandhi”) on May 29, 2009, under Section 1(b) of the Trademark Act and registered on the Principal Register on August 2, 2011. The mark and registration were assigned to Meenakshi on December 7, 2011, and recorded in the Assignment Services Division at Reel 4674 / Frames 0303-0304.

³ For IDHAYAM in standard characters for “banana chips; cut vegetables; dried fruits; dried lentils; frozen pre-packaged entrees consisting primarily of seafood; frozen vegetables; fruit-based snack food; nut-based snack foods; pickles; potato-based snack foods; pre-packaged dinners consisting of meat, poultry, seafood or vegetables; soy-based snack foods; vegetable chips; vegetable-based snack foods; frozen pre-packaged entrees consisting primarily of meat, fish, poultry or vegetables;

and 4334000⁴ on grounds of priority and likelihood of confusion and dilution. The Board issued an institution order on January 5, 2015, setting Meenakshi's time to answer to February 14, 2015.

This matter now comes up on Meenakshi's motion (filed January 9, 2015, in lieu of an answer) for summary judgment on grounds of claim preclusion

frozen pre-packaged vegetable-based entrees" in International Class 29 and "bread mixes; cereal based snack food; crepes; flour; frozen flour-free foods, namely, waffles, pancakes, crepes, sandwich wraps, muffins and griddle cake sandwiches which are protein-enriched; grain-based chips; mixes for making baking batters; mixes for making batters for fried foods; packaged meal mixes consisting primarily of pasta or rice; pancake mixes; pasta; pre-mixed pancake batter; processed cereal-based food to be used as a breakfast food, snack food or ingredient for making other foods; relish; rice; rice-based snack foods; roasted maize; tapioca; wafers; wheat-based snack foods; frozen pre-packaged entrees consisting primarily of pasta or rice; pre-packaged meals consisting primarily of pasta or rice" in International Class 30. Underlying Application Serial No. 85552372 was filed on February 24, 2012, under Section 1(a) of the Trademark Act and registered on the Principal Register on October 16, 2012.

⁴ For IDHAYAM SOUTH INDIAN DELITE and design for "banana chips; cooking oil; cut vegetables; dried fruits; dried lentils; edible oils; frozen pre-packaged entrees consisting primarily of seafood; frozen vegetables; fruit-based snack food; nut-based snack foods; pickles; potato-based snack foods; pre-packaged dinners consisting of meat, poultry, seafood or vegetables; sesame oil; soy-based snack foods; vegetable chips; vegetable oils; vegetable-based snack foods; frozen pre-packaged entrees consisting primarily of meat, fish, poultry or vegetables; frozen pre-packaged vegetable-based entrees" in International Class 29 and "bread mixes; cereal based snack food; crepes; flour; frozen flour-free foods, namely, waffles, pancakes, crepes, sandwich wraps, muffins and griddle cake sandwiches which are protein-enriched; grain-based chips; mixes for making baking batters; mixes for making batters for fried foods; packaged meal mixes consisting primarily of pasta or rice; pancake mixes; pasta; pre-mixed pancake batter; processed cereal-based food to be used as a breakfast food, snack food or ingredient for making other foods; relish; rice; rice-based snack foods; roasted maize; tapioca; wafers; wheat-based snack foods; frozen pre-packaged entrees consisting primarily of pasta or rice; pre-packaged meals consisting primarily of pasta or rice" in International Class 30. Underlying Application Serial No. 85684309 was filed on July 23, 2012, under Section 1(a) of the Trademark Act and registered on the Principal Register on May 14, 2013.

based on the judgment rendered in Opposition No. 91192693. The motion is fully briefed.

The Prior Proceeding: Opposition No. 91192693

On November 17, 2009, VVV filed a notice of opposition against Application Serial No. 77747207 (the underlying application for involved Registration No. 4006654) on grounds of priority and likelihood of confusion and fraud. After the time for making pretrial disclosures but prior to the opening of testimony, VVV's attorney sought to withdraw as counsel. The request was granted and VVV was allowed time to either appoint new counsel or to proceed *pro se*. As no response was received from VVV, the Board, on November 15, 2010, ordered VVV to show cause why default judgment should not be entered against it based on its apparent loss of interest in the case. VVV again failed to respond so judgment was entered against VVV and the opposition was dismissed with prejudice on January 3, 2011. The judgment and dismissal were not appealed.

Meenakshi's Motion for Summary Judgment

A motion for summary judgment is a pretrial device intended to save the time and expense of a full trial when the moving party is able to demonstrate, prior to trial, that there is no genuine dispute of material fact, and that it is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Opryland USA Inc. v. Great American Music Show Inc.*, 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992); and *Sweats*

Fashions Inc. v. Pannill Knitting Co., 833 F.2d 1560, 4 USPQ2d 1793 (Fed. Cir. 1987). The evidence must be viewed in a light most favorable to the non-moving party, and all reasonable inferences are to be drawn in the non-movant's favor. *Lloyd's Food Products, Inc. v. Eli's, Inc.*, 987 F.2d 766, 25 USPQ2d 2027, 2029 (Fed. Cir. 1993); *Opryland USA, supra*.

By its motion, Meenakshi seeks to preclude VVV from bringing the instant action based on the default final judgment entered in Opposition No. 91192693. We apply claim preclusion when there is: (1) an identity of parties or their privies; (2) a final judgment on the merits of the prior claim; and (3) the second claim is based on the same transactional facts as the first and should have been litigated in the prior case. *See Sharp Kabushiki Kaisha v. Thinksharp, Inc.*, 448 F.3d 1368, 79 USPQ2d 1376, 1378 (Fed. Cir. 2006).

A. Identity of Parties or Privies

There is no dispute that there is identity of plaintiffs as VVV is the plaintiff in both proceedings. As to identity of defendants, Meenakshi asserts that it is the privy of Gandhi because, *inter alia*, Gandhi assigned all right, title and interest in, as well as the goodwill associated with, the mark in the '654 registration to Meenakshi on December 7, 2011, nearly a year after termination of the prior opposition.⁵ In view of the assignment, we find no

⁵ The assignment was recorded in the Assignment Services Division at Reel 4674 / Frames 0303-0304.

genuine dispute of material fact that Meenakshi is in privity with Gandhi.⁶ See *Int'l Nutrition Co. v. Horphag Research, Ltd.*, 220 F.3d 1325, 55 USPQ2d 1492, 1495 (Fed. Cir. 2000) (privity where parties hold successive interests in the same property).

B. Final Judgment on Merits of Earlier Claim

As to the second factor, there is no genuine dispute of material fact that there has been a final judgment on the merits of an earlier claim since a default judgment can operate as such for purposes of *res judicata*. See *Sharp Kabushiki Kaisha*, 79 USPQ2d at 1378.

C. Same Set of Transactional Facts

As to this factor, we find no genuine dispute of material fact that the claims in this proceeding as against the '654 registration are based on the same set of transactional facts as those of the opposition. There is no dispute that the subject application in the prior opposition matured into the subject registration of this cancellation and that VVV has again asserted a claim of priority and likelihood of confusion against the same mark and goods in the application/registration based on the same pleaded common law mark. Although the goods pleaded by VVV in this proceeding are more broadly

⁶ VVV has submitted no evidence to rebut the assertion of privity. Rather, VVV has objected to the evidence on various grounds including lack of foundation and relevance. See *Petitioner's Objections to Evidence*, 8 TTABVue 113-114. VVV's objections are overruled. The file of each registration against which a petition for cancellation is filed forms part of the record of the proceeding without any action by the parties and reference may be made to the file for any relevant and competent purpose. See Trademark Rule 2.122(b)(1); *Cold War Museum, Inc. v. Cold War Air Museum, Inc.*, 586 F.3d 1352, 92 USPQ2d 1626, 1628 (Fed. Cir. 2009).

described, we note that they encompass the goods pleaded in the opposition and do not change the “transactional facts.”

We find the same to hold true concerning VVV’s newly-raised dilution claim, particularly in view of VVV’s allegation in the opposition that its mark “is well known and recognized”. VVV has failed to establish that the transactional facts are different in this case than in the earlier proceeding.

In view thereof, we find no genuine dispute of material fact and find that **VVV’s claims in this proceeding are barred by *res judicata* as against Registration No. 4006654.**

On the other hand, we **DENY Meenakshi’s motion for summary judgment as to Registration Nos. 4225172 and 4334000** as the differences in the goods and, in the case of the ‘000 registration, the marks, from those involved in the prior opposition constitute a different set of transactional facts so as to preclude the application of claim preclusion.

Conclusion

The petition for cancellation is **DISMISSED with prejudice as to Registration No. 4006654**. Proceedings herein are **RESUMED as to Registration Nos. 4225172 and 4334000**. Dates are **RESET** as follows:

Time to Answer	8/14/2015
Deadline for Discovery Conference	9/13/2015
Discovery Opens	9/13/2015
Initial Disclosures Due	10/13/2015
Expert Disclosures Due	2/10/2016
Discovery Closes	3/11/2016
Plaintiff’s Pretrial Disclosures Due	4/25/2016

Plaintiff's 30-day Trial Period Ends	6/9/2016
Defendant's Pretrial Disclosures Due	6/24/2016
Defendant's 30-day Trial Period Ends	8/8/2016
Plaintiff's Rebuttal Disclosures Due	8/23/2016
Plaintiff's 15-day Rebuttal Period Ends	9/22/2016

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 taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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