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

Proceeding	92061955
Party	Defendant Reginald Williams
Correspondence Address	REGINALD WILLIAMS PO BOX 202738 ARLINGTON, TX 76006 UNITED STATES info@timetravelacademy.com
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Joseph J. Zito
Filer's e-mail	jzito@dnlzito.com
Signature	/s/ Joseph J. Zito
Date	09/14/2015
Attachments	Motion to Dismiss for Lack of Standing.pdf(90818 bytes)

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

DFASS BRAND HOLDINGS, LLC,
Petitioner,

vs.

REGINALD WILLIAMS, an individual,
Registrant

Cancellation No. 92061955

Trademark: TIME TRAVEL ACADEMY

Registration No. 4,313,253

REGISTRANT’S MOTION TO DISMISS
THE PETITION TO CANCEL FOR LACK OF STANDING

Registrant, Moves to Dismiss the Petition to Cancel Registrant’s trademark registration 4,313,253, in Cancellation No. 92-061,955.

I. Assertions in the Petition

The Petition to Cancel makes only two assertions which could even be considered related to standing:

8. Petitioner’s application for registration was denied based on the validity of the Mark and the Registration.
9. Petitioner is, and will continue to be, damaged by the Registration of this Mark.

Neither of these assertions, taken separately or combined, confer standing on Petitioner.

II. The Petition Should be Dismissed

Petitioner fails to state a claim upon which relief may be granted because Petitioner lacks standing and fails to provide a legally sufficient ground for cancellation. “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.”¹ Under the FRCP and the Trademark Rules and precedent, a complaint must include a short and plain statement of the claim, the elements of the claim, and enough factual support to show that the pleader is entitled to relief and to give the defendant fair notice.² Each and every allegation must be supported by at least a modicum of details.³ Such details are necessary not only to give the defendant fair notice of the basis of each claim, but also to show the Board that a right to relief exists assuming all such facts and allegations are taken to be true.⁴ “In order to withstand a motion to dismiss for failure to state a claim, a plaintiff need only allege such facts as would, if proved, establish that (1) the plaintiff has standing to maintain the proceedings, and (2) a valid ground exists for opposing the mark.”⁵ Dismissal is appropriate where it appears certain that [Petitioner] is entitled to no relief under any set of facts which could be proved in support of its claim.⁶ Here, the Petition should be dismissed for lack of standing and failure to provide a legally sufficient ground for cancellation, Petitioner has failed to plead

¹ See *Petroleos Mexicanos v. Inermix S.A.*, 97 USPQ2d 1403 (TTAB 2010); *Fair Indigo LLC v. Style Conscience*, 85 USPQ2d 1536, 1538 (TTAB 2007); TBMP Section 503.02.

² 10 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Fair Indigo LLC*, 85 USPQ2d at 1538 (elements of each claim should be stated concisely and directly, and include enough detail to give the defendant fair notice); *McDonnell Douglas Corp. v. National Data Corp.*, 228 USPQ 45, 48 (TTAB 1985) (petitioner’s Trademark Act Section 2(a), 15 U.S.C. Section 1052(a) allegations were merely conclusory and unsupported by factual averments); *Ashcroft v. Iqbal*, 556 U.S. ___, 129 S.Ct. 1937 (2009), quoting *Twombly*, 550 U.S. at 570; 37 C.F.R. Section 2.104(a); TBMP Section 309.03(a)(2); Fed. R. Civ. P. 8(a)(2).

³ *Id.*

⁴ See *Fair Indigo LLC*, 85 USPQ2d at 1538; TBMP Section 309.02(a)(2) (“A pleading should include enough detail to give the defendant fair notice of the basis for each claim”).

⁵ See *Fair Indigo, LLC*, 85 USPQ2d 1536 at 1537.

⁶ *Id.*

essential elements of a claim, has failed to provide proper notice and failed to provide even a modicum of details.

Petitioner Lacks Standing

Petitioner lacks standing to bring this cancellation action. Standing is a threshold issue that must be proven by a plaintiff in every *inter partes* case.⁷ The requirement that a plaintiff have standing is to prevent litigation where there is no real controversy between the parties.⁸ For a Petitioner to prevail in a proceeding, it is incumbent upon that party to show (1) that it possesses standing to challenge the continued presence on the register of the subject registration and (2) that there is a valid ground why the registrant is not entitled under law to maintain the registration."⁹ To have standing, a plaintiff must have a *real interest* in the outcome of the proceeding - the plaintiff must have a direct and personal stake in the outcome.¹⁰

Here, Petitioner lacks standing to bring this cancellation action where it has failed to plead any *real interest* in the outcome of the proceeding. Petitioner asserts that some *unidentified* application for registration of some *unidentified* trademark was denied for some *unstated* reason:

"8. Petitioner's application for registration was denied based on the validity of the Mark and the Registration."

Petitioner follows this vague assertion with a conclusory statement:

"9. Petitioner is, and will continue to be, damaged by the Registration of this Mark."

⁷ See *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023 (TTAB 1999); *Lipton Industries v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 1851 (C.C.P.A. 1982).

⁸ See *Lipton Indust.*, 670 F. 2d 1024.

⁹ *Id.*

¹⁰ See *Ritchie*, 170 F.3d 1092.

Petitioner fails to identify the alleged "Petitioner's application for registration," thus depriving Registrant and the TTAB of the ability to judge the existence of standing. The lack of identification of the "application" is a failure to plead an essential element of standing. In addition, Registrant is not provided with notice, and Petitioner had failed to provide even a modicum of details from which to understand or ascertain standing.

The assertion that the unidentified application was "denied based on the validity of the Mark and the Registration" is not only an unverifiable assertion but also fails to state if there were additional reasons for the denial of the registration of the unidentified application. If the unidentified application were denied for additional reasons, then the Petition to Cancel would be futile and thus Petitioner would have no standing as there would be no real interest.

Petitioner makes no other statements in support of standing. Petitioner has made no allegation of any competitive need to use the mark of Registration No. 3,718,691. Where Petitioner is not engaged in business in connection with the Mark, in the United States, Petitioner does not have any real interest in the outcome of the proceeding. *See Nobelle.com, LLC v. Qwest Communications International, Inc.*, 66 USPQ2d 1300 (TTAB 2003) (Where a party is not engaged in any business at all, the party does not have a real interest in the outcome of the proceeding).

CONCLUSION

The Petition to Cancel should be dismissed because Petitioner does not have standing, fails to properly allege standing and fails to state a claim upon which relief may be granted.

Dated: September 14, 2015

Respectfully submitted,

/s/ Joseph J. Zito

Joseph J. Zito

DNL ZITO

1250 Conn. Ave, NW, Suite 200

Washington, DC 20036

Attorney for Registrant

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing **REGISTRANT'S MOTION TO DISMISS PETITION FOR LACK OF STANDING** is being served on September 14, 2015, by e-mail and by deposit of same in the United States Mail, first class postage prepaid, in an envelope addressed to counsel for Petitioner at:

MARKO & MAGOLNICK, P.A.

David Everett Marko, Esq.

3001 S.W. 3rd Avenue

Miami, Florida 33129

Phone: 305-285-2000

Email: marko@mm-pa.com

Attorney for Petitioner

/s/ Joseph J. Zito

Joseph J. Zito