

This Opinion is Not a
Precedent of the TTAB

Mailed: June 26, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

California Wheel Distributor Inc.

v.

Peregrine Automotive, LLC.

Cancellation No. 92080626

Lina A. Asmar of L.A. Law, PLLC,
for California Wheel Distributor Inc.

Marc E. Hankin and Amy E. Burke of Hankin Patent Law, APC,
for Peregrine Automotive, LLC.

Before Wellington, Heasley, and Lavache, Administrative Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

Peregrine Automotive, LLC (“Respondent”) owns a registration on the Principal Register for the mark REVENGE AUTO PARTS in standard characters for “on-line wholesale and retail store services featuring auto parts,” in International Class 35.¹

California Wheel Distributor Inc. (“Petitioner”) filed a Petition to Cancel Respondent’s registration.² Petitioner alleges that “Respondent is not currently using

¹ Registration No. 5573560 issued on October 2, 2018; Section 8 declaration accepted.

² 1 TTABVue.

the mark REVENGE AUTO PARTS properly in interstate commerce as required by 15 U.S.C. § 1051” and that “Respondent has abandoned the mark REVENGE AUTO PARTS.”³ The only allegation involving Petitioner, itself, is:⁴

Petitioner has filed trademark application US Serial No.: 90/403,196 for the mark REVENGE and Design, in International Class 012 for “Wheel disks for vehicles; Wheel rims; Wheel rims for motor cars; Wheels; Wheels for automobiles; Rims for vehicle wheels; Vehicle wheel rims; Vehicle wheel rims and structural parts therefore; Vehicle wheel spokes; Vehicle wheels”, currently pending, for which the USPTO has issued a likelihood of confusion rejection based on Respondent’s registration.

Respondent denies the salient allegations of the petition to cancel.⁵ Specifically, as to Petition to Cancel ¶ 1, above, Respondent answered “Registrant lacks sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 1, and on that basis denies the allegations of Paragraph 1.”⁶

I. Burden of Proof

Petitioner introduced evidence during its assigned trial period and filed a trial brief. Respondent did neither. However, Respondent was not required to introduce evidence or file a trial brief in this matter. That is, Respondent bears no initial burden of proof in this matter and may we not take its failure to submit evidence or file a trial brief as a concession of the case. *Shenzhen IVPS Tech. Co. Ltd. v. Fancy Pants Prods., LLC*, 2022 USPQ2d 1035, at *2 (TTAB 2022) (“Applicant did not take

³ 1 TTABVUE (Petition to Cancel ¶¶ 2-3).

⁴ 1 TTABVUE (Petition to Cancel ¶ 1).

⁵ 11 TTABVUE.

⁶ 11 TTABVUE (Answer ¶ 1).

testimony or introduce any evidence during its testimony period nor file a brief, but it is not required to do so.”) (citing *Yazhong Investing Ltd. v. Multi-Media Tech. Ventures, Ltd.*, 126 USPQ2d 1526, 1531 n.13 (TTAB 2018) (“Because Respondent, as defendant herein, is under no obligation to submit evidence or a brief, we do not construe Respondent’s failure to do so as a concession of the case.”)).

Petitioner, on the other hand, is the plaintiff in this proceeding and thus bears the burden of establishing its entitlement to a cause of action, as well is proving its claim by a preponderance of the evidence. *See Jansen Enters. Inc. v. Rind*, 85 USPQ2d 1104, 1107 (TTAB 2007).

II. The Record

The record includes the pleadings and, pursuant to Trademark Rule 2.122(b)(1), 37 C.F.R. § 2.122(b)(1), Respondent’s registration file.

During its trial period, Petitioner filed a Notice of Reliance on: copies of Respondent’s responses to Petitioner’s discovery requests; copies of various Internet screenshots and website printouts; and copies from Respondent’s registration file, which, as mentioned, is automatically of record pursuant to Rule 2.122(b)(1).⁷

Of importance, Petitioner did not make of record its pleaded application or any evidence to support its allegation that “the USPTO has issued a likelihood of confusion rejection [of the application] based on Respondent’s registration.” Again, Respondent denied the allegation in its Answer and we cannot rely on the pleadings

⁷ 35 TTABVUE.

to either establish Petitioner's ownership of the pleaded registration or that the USPTO has refused Petitioner registration of any applied-for mark.

In sum, there is no evidence of record to establish that Petitioner owns the pleaded application or that Respondent's registration is the basis for any refusal of the pleaded application.

III. Petitioner's Failure to Prove Its Entitlement to a Statutory Cause of Action

Entitlement to a statutory cause of action is a requirement in every inter partes case. *Australian Therapeutic Supplies Pty. Ltd. v. Naked TM, LLC*, 965 F.3d 1370, 1373-76 (Fed. Cir. 2020) (citing *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 125-26 (2014)).

In its trial brief, Petitioner does not argue that it is entitled to a statutory cause of action, but repeats its allegation that it is owner of an application "that Respondent's registration was cited [by the USPTO] as a basis for refusal of Petitioner's pending application."⁸ Petitioner does not cite to the record to support this argument. Indeed, as pointed out above, it cannot do so because the pleaded application is not of record, nor is there any other evidence to support Petitioner's allegation and argument.

Again, Petitioner cannot rely on the fact that Respondent did not file a trial brief. "The facts regarding standing . . . must be affirmatively proved. Accordingly,

⁸ 36 TTABVUE 4.

[plaintiff] is not entitled to standing solely because of the allegations in its petition.”
Lipton Indus., Inc. v. Ralston Purina Co., 670 F.2d 1024, 1028 (CCPA 1982)).

Accordingly, we find Petitioner failed to prove its entitlement to a statutory cause of action and this alone is a sufficient basis to deny the Petition. *See Lumiere Prods., Inc. v. Int’l Tel. & Tel. Corp.*, 227 USPQ 892, 893 (TTAB 1985). Because Petitioner has not demonstrated an entitlement to a statutory cause of action, we need not and do not reach the substantive claims of the Petition to Cancel.

Decision: The Petition to Cancel is denied.