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TTAB

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500

Ferrell

September 25, 2025

Cancellation No. 92083760

*Small Business In Transportation Coalition,  
Inc.*

*v.*

*Unified Carrier Registration Plan*

**Before Wellington, English, and Brock,  
Administrative Trademark Judges.**

**By the Board:**

This proceeding comes before us on Respondent Unified Carrier Registration Plan's April 14, 2025 motion for summary judgment on Petitioner Small Business In Transportation Coalition, Inc.'s claims of genericness, violation of Trademark Act Section 2(b), 15 U.S.C. § 1052(b), and fraud on the United States Patent and Trademark Office ("USPTO").<sup>1</sup> The motion is fully briefed.<sup>2</sup>

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<sup>1</sup> Citations to the Board record refer to TTABVUE, the Board's online docketing system. *See Turdin v. Trilobite, Ltd.*, No. 94002505, 2014 TTAB LEXIS 17, at \*6 n.6 (TTAB 2014). The number preceding "TTABVUE" corresponds to the docket entry number, and any number following "TTABVUE" refers to the page number of the docket entry where the cited materials appear.

<sup>2</sup> *See* 24 TTABVUE (Petitioner's response); 25 TTABVUE (Respondent's reply). Pursuant to Trademark Rule 2.127(a), Petitioner's response to the motion was due on or before May 14, 2025. 37 C.F.R. § 2.127(a). Petitioner's response was not filed until May 15, 2025. 24 TTABVUE. Nonetheless, because Respondent submitted a reply on the merits of Petitioner's response, the Board exercises its discretion to consider both Petitioner's response and Respondent's reply thereto.

The Board has fully considered the parties' briefs and evidence, and addresses the parties' arguments and the record only to the extent necessary to set forth the Board's analysis and conclusions. *Guess? IP Holder LP v. Knowluxe LLC*, No. 92060707, 2015 TTAB LEXIS 482, at \*4-5 (TTAB 2015).

## **I. Background**

Respondent is the record owner of Registration No. 5397410 on the Principal Register for the mark



for use in connection with “maintaining a registry of motor carriers, motor private carriers, brokers, freight forwarders, and leasing companies engaged in interstate transportation” in International Class 35 (“Respondent’s Registration”). Respondent filed the underlying application on October 13, 2016, pursuant to Trademark Act Section 1(b), 15 U.S.C. § 1051(b), and Respondent’s Registration issued on February 6, 2018, pursuant to Trademark Act Section 1(d), 15 U.S.C. § 1051(d), with a claimed date of first use anywhere and first use in commerce of May 31, 2017.<sup>3</sup>

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The Board also notes Petitioner’s May 15, 2025 change of correspondence address, and the Board’s records have been updated accordingly.

<sup>3</sup> The wording “UNIFIED CARRIER REGISTRATION PLAN” is disclaimed. The colors blue, red, white, and gray are claimed as a feature of the mark. The mark consists of a stylized circular design featuring a thin outer gray ring border, a thicker blue circular ring within that one, which includes the white wording “UNIFIED CARRIER” on the top portion of the circle and the white wording “REGISTRATION PLAN” on the bottom portion of the circle, and two gray five-pointed stars separating the top and bottom portions of the circular wording. On the inside of that ring is a thin red border. In the innermost portion of the circle

In its petition for cancellation, Petitioner alleges the following claims: (1) “UCR” in the mark is generic and thus, the registration should be cancelled; (2) the mark consists of or comprises the flag or coat of arms or other insignia of the U.S. in violation of Section 2(b); and (3) Respondent committed fraud in the procurement of the registration by stating that it was a “nonprofit entity” in its application.<sup>4</sup>

Respondent filed an answer denying the salient allegations of the petition for cancellation.<sup>5</sup>

## II. Genericness Claim

At the outset, we note that Respondent’s Registration was more than five years old when Petitioner filed the petition for cancellation. Thus, the claims that may be brought against the registration are limited. 15 U.S.C. §§ 1064(3), (6).

In its petition for cancellation, Petitioner alleges that “UCR” in Respondent’s mark is generic and, because “UCR” is not disclaimed in Respondent’s Registration, the registration should be cancelled.<sup>6</sup> Petitioner’s claim that only part of Respondent’s mark is generic is time barred and therefore fails to state a claim upon which relief can be granted. 15 U.S.C. § 1064(3); *Montecash LLC v. Anzar Enters., Inc.*, No.

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is a white circle which includes a stylized shield design. The shield consists of a red top portion, which includes the white stylized wording “UCR”, and a bottom portion which features a blue background and a gray stylized road in the middle of that blue portion which is leading into the distance, including white lines on the road. The red top and blue bottom of the shield design are separated by a horizontal white line. The white background is for background purposes only and is not claimed as a feature of the mark.

<sup>4</sup> See 1 TTABVUE.

<sup>5</sup> See 6 TTABVUE.

<sup>6</sup> 1 TTABVUE 6-7.

92051768, 2010 TTAB LEXIS 133, at \*6-7 (TTAB 2010) (“The Board has held that Section 14(3) provides for a claim of cancellation on the ground of genericness with respect to a registration more than five years old only if it is alleged that the mark **as a whole** is generic.”) (emphasis added); *Finanz St. Honore, B.V. v. Johnson & Johnson*, No. 91161028, 2007 TTAB LEXIS 63, at \*6-7 (TTAB 2007) (claim that a portion of the mark is generic is time-barred for a registration more than five years old). Accordingly, Petitioner’s claim that the term “UCR” in Respondent’s mark is generic is **dismissed with prejudice**.

### III. Section 2(b) Claim

In its response to Respondent’s motion for summary judgment, Petitioner “withdraws and foregoes any arguments in support of [its claim that the] registration is barred under” Section 2(b).<sup>7</sup> Petitioner filed this withdrawal without the written consent of Respondent.<sup>8</sup>

Trademark Rule 2.114(c), 37 C.F.R. § 2.114(c), provides that after an answer is filed, the petition for cancellation may not be withdrawn without prejudice except with the written consent of Respondent.

In view thereof, and because the withdrawal was filed after Respondent’s answer, the Section 2(b) claim in Petitioner’s petition for cancellation is **dismissed with prejudice**.

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<sup>7</sup> 24 TTABVUE 3 n.1.

<sup>8</sup> See generally *id.*

#### IV. Insufficiently Pleaded Fraud Claim

Fraud in procuring a trademark registration may occur when an applicant knowingly makes a false, material representation of fact in connection with an application to register with the intent of obtaining a registration to which it otherwise is not entitled. *See In re Bose Corp.*, 580 F.3d 1240, 1244-45 (Fed. Cir. 2009). Under Section 14, a registration may be cancelled “[a]t any time if the . . . registration was obtained fraudulently.” 15 U.S.C. § 1064(3).

In the petition for cancellation, Petitioner alleges that Respondent knowingly misidentified itself in its application as a “nonprofit entity” and that this was a “material representation[]” that the USPTO relied on in issuing the registration.<sup>9</sup> The alleged misidentification of Respondent’s entity type as “a nonprofit entity” does not constitute a basis for a fraud claim because such a misstatement, standing alone, was not material to the USPTO’s determination to issue a registration. *See DrDisabilityQuotes.com, LLC v. Krugh*, No. 92074232, 2021 TTAB LEXIS 70, at \*13 (TTAB 2021) (“With respect to claims of fraud in obtaining a registration, the materiality of any statement made in an application is determined in the context of whether the statement is critical to the examining attorney’s decision to approve a mark for publication.”) (citing *Standard Knitting, Ltd. v. Toyota Jidosha Kabushiki Kaisha*, No. 91116242, 2006 TTAB LEXIS 9, at \*32-33 (TTAB 2006)); *cf. Phat Scooters, Inc. v. Fatbear Scooters, LLC*, No. 92078878, 2023 TTAB LEXIS 135, at \*16-17 (TTAB 2023) (summary judgment dismissing ownership claim where “single

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<sup>9</sup> 1 TTABVUE 8-9, ¶¶ 35, 38.

commercial enterprise misidentified as to entity type in the application” because such a mistake is a “correctable error”).

Because Petitioner’s pleaded fraud claim fails to state a claim upon which relief can be granted, the claim is **dismissed**.

## V. Unpleaded Fraud Claim

Petitioner argues in its brief that Respondent committed fraud because Respondent “did not legally exist at the time Respondent’s trademark application was filed” and “[i]f the applicant does not own the mark on the application filing date, the application is void.”<sup>10</sup> However, Petitioner did not plead this basis for a claim of fraud in its petition for cancellation,<sup>11</sup> and the Board does not consider motions for summary judgment or responses thereto on unpleaded grounds. *See* TBMP § 528.07(a) and authorities cited therein; *see also O.C. Seacrets, Inc. v. Hotelplan Italia S.p.A.*, No. 91190886, 2010 TTAB LEXIS 228, at \*9 (TTAB 2010) (Board will not grant summary judgment on an unpleaded ground).

## VI. Decision

In view of the foregoing, Respondent’s motion for summary judgment is **granted** and the petition for cancellation is **denied**.<sup>12</sup>

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<sup>10</sup> 24 TTABVUE 6-7, ¶ 12.

<sup>11</sup> The Board does not construe Petitioner’s pleaded fraud claim, which asserts that Respondent misidentified its entity type, to be a claim that the entity did not exist at all at the time Respondent filed its application.

<sup>12</sup> In view thereof, Respondent’s motion to amend its registration is **moot**. Accordingly, the fee paid in support of Respondent’s motion to amend will be refunded in due course. Respondent may refile or renew, as appropriate, its Trademark Act Section 7, 15 U.S.C. § 1057, request with the Post-Registration Branch of the USPTO.