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

Proceeding	91184673
Party	Defendant Jay Bharat Foods, Inc.
Correspondence Address	Christopher J. Day Law Office of Christopher Day 301 E. Bethany Home Road, Suite A-213 Phoenix, AZ 85012 chris@daylawfirm.com
Submission	Motion to Dismiss - Rule 12(b)
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Date	07/22/2008
Attachments	Motion to Dismiss.pdf (4 pages)(1898537 bytes)

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

In re:

Applicant's Mark: BEST QUALITY PRODUCTS JAY BHARAT FOODS, INC.
Serial No.: 77011248
Date of Publication: February 19, 2008

Jay Bharat Foods, Inc.,

Applicant,

v.

India's Finest, Ltd.,

Opposer.

Opposition No. 91184673

MOTION TO DISMISS

Pursuant to Fed. R. Civ. P. 12(b)(6) and TBMP §503, Applicant respectfully submits this Motion to Dismiss Opposition No. 91184673 filed by Opposer India's Finest, Ltd. Applicant now moves to dismiss the Opposition because (1) Opposer has failed to state a cause upon which relief may be granted under Fed. Rule Civ. P. 12(b)(6) and (2) Opposer has failed to properly plead the Opposition under the Rules of the Trademark Trial and Appeal Board, as well as under the Federal Rules of Civil Procedure.

I. THE NOTICE OF OPPOSITION FAILS TO STATE A CLAIM.

Opposer has failed to state a claim upon which relief may be granted. According to the Trademark Trial and Appeal Board, an opposer must plead a real interest in the proceedings. Opposer has alleged no facts that suggest how it would be damaged.

Standing is a threshold issue that must be proven by a plaintiff in every inter partes case. See Ritchie v. Simpson, 170 F.3d 1092, 50 USPQ2d 1023 (Fed. Cir. 1999); and Lipton Industries, Inc. v. Ralston Purina Co., 670 F.2d 1024, 213 USPQ 185 (CCPA 1982). The purpose of the standing requirement, which is directed solely to the interest of the plaintiff, is to prevent litigation when there is no real interest or controversy between the parties. Lipton Industries, Inc., 213 USPQ at 189. In the case of a notice of opposition, the standing requirement of a plaintiff has its statutory basis in Section 13 of the Trademark Act which provides that “any person who believes he is or will be damaged ... by the registration of a mark on the principal register ...” may file a notice of opposition. To establish standing, it must be shown that the plaintiff has a “real interest” in the outcome of the proceeding; that is, plaintiff must have a direct and personal stake in the outcome of the opposition. Ritchie, 50 USPQ2d at 1023. Facts regarding legitimate personal interest are part of the plaintiff’s case and must be pled and proved. Lipton Industries, 213 USPQ 189.

Notably, Opposer does not allege that Applicant’s mark BEST QUALITY PRODUCTS JAY BHARAT FOODS, INC. is confusingly similar to any mark of Opposer’s, nor does Opposer allege any statutory basis to justify the opposition.

II. THE FORM OF NOTICE FAILS TO COMPLY WITH THE RULES OF THE TTAB.

According to the Trademark Trial and Appeal Board, the form of a complaint must meet the general requirements for submissions to the Board as set forth in 37 CFR 2.126. Under these rules, text in an electronic submission must be in at least 11-point type and double-spaced. 37 CFR 2.126(c). Furthermore, the Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) states that “the elements of a claim should be stated simply, concisely, and directly. However, the pleading should include enough detail to give the defendant fair notice of the basis for each claim. All averments should be made in numbered paragraphs, the content of each of which should be limited as far as practicable to a statement of a single set of circumstances.” TBMP 309.02(a); Fed. R. Civ. P. 8(e)(1).

Complaints that fail to comply with the Federal Rules and TTAB rules of procedure are deficient. In this case, Opposer’s Notice of Opposition was a two page narrative consisting of seven unnumbered paragraphs. Although the final paragraph contains a prayer for relief, the remaining three paragraphs each contain numerous averments, none of which properly plead a claim under which relief can be granted. Accordingly, the Notice of Opposition fails to provide Applicant with fair notice of the basis for Opposer’s claim.

CONCLUSION

For the foregoing reasons, Applicant respectfully requests that the Board dismiss the Opposition proceeding in its entirety.

Dated this 22 day of July, 2008.

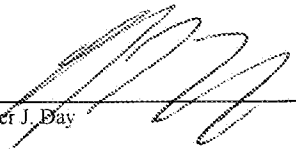
/Christopher J Day/

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CERTIFICATE OF SERVICE

I hereby certify that this correspondence, is being deposited on July 22, 2008, in the
U.S. mail, first class postage pre-paid, addressed to Opposer at the following Address:

India's Finest, Ltd.
Meghna B. Mohan
2733 McCone Avenue
Hayward, CA 94545



Christopher J. Day