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UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Baxley

Mailed: November 13, 2009

Opposition No. **91190326**

TeleTracking Technologies, Inc.

v.

SecurLinx Holding Corporation

Before Hairston, Drost and Bergsman, Administrative Trademark Judges

By the Board:

SecurLinx Holding Corporation ("applicant") filed an application to register the mark IDTRAC in standard character form for "computer software for use in the extraction, analysis, and comparison of biometric information regarding individuals derived from documents, pictures, and databases" in International Class 9.[1]

On May 20, 2009, TeleTracking Technologies, Inc. ("opposer") filed a notice of opposition to registration of applicant's mark. As grounds for opposition, opposer alleges that: (1) there is a likelihood of confusion with its family of marks for "TRACKING-formative[s]," which include its previously used and applied-for marks

[1] Application Serial No. 77561677, filed September 3, 2008, based on an assertion of a bona fide intent to use the mark in commerce under Trademark Act Section 1(b), 15 U.S.C. Section 1051(b).

PREADMITTRACKING for "computer software [for] providing patient information to hospitals" in International Class 9,[2] and TELETRACKING for "computer software for use in the health care field to enhance operational efficiencies" in International Class 9 and "consulting services in the health care field" in International Class 44;[3] and its previously used mark TRANSPORTTRACKING for "providing healthcare information to assist in workflow automation" (paragraphs 3-7); (2) "upon information and belief," applicant did not have a bona fide intent to use the involved mark in commerce on all of the identified goods when the involved application was filed (paragraph 8); (3) "upon information and belief," applicant is not the owner of the mark sought to be registered (paragraph 9); and (4) "upon information and belief," the application was assigned in contravention of Trademark Act Section 10, 15 U.S.C. Section 1060, and is therefore void (paragraph 10).[4] Applicant, in its answer,

[2] This mark is the subject of application Serial No. 78742212, filed October 28, 2005, in which opposer alleges that it first used the mark anywhere and first used the mark in commerce on January 1, 2000. On October 20, 2009, this application matured into Registration No. 3700390.

[3] This mark is the subject of application Serial No. 77272817, filed July 31, 2007, based on an assertion of a bona fide intent to use the mark in commerce under Trademark Act Section 1(b), 15 U.S.C. Section 1051(b). This application is subject of Opposition No. 91191011, styled *Infologix, Inc. v. TeleTracking Technologies, Inc.*

[4] The Board notes that the record herein does not indicate that applicant acquired its involved mark through assignment and that no document reflecting an assignment of the involved mark to

denied the salient allegations of the notice of opposition and asserted various affirmative defenses.

This case now comes up for consideration of applicant's motion (filed August 26, 2009) for partial judgment on the pleadings in which applicant seeks dismissal of opposer's alleged likelihood of confusion and false suggestion claims based on the dissimilarity of the marks at issue. The motion has been fully briefed.

As an initial matter, we note that, after applicant filed its reply brief in support of its motion for partial judgment on the pleadings, opposer filed a "reply brief in support of opposer's opposition" to applicant's motion. Opposer's "reply brief" is actually a surreply brief and is expressly prohibited by Trademark Rule 2.127(a). Accordingly, that surreply brief has received no consideration in this decision.

We note in addition that, in its motion, applicant seeks dismissal of opposer's priority/likelihood of confusion and false suggestion claims. However, the electronic cover sheet for the notice of opposition indicates that opposer is alleging only priority and likelihood of confusion under Trademark Act Section 2(d), 15

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applicant is recorded with the USPTO's Assignment Branch. Accordingly, opposer's claim herein that the involved application is void because it was assigned in contravention of Trademark Act Section 10 may be without factual basis. See Patent and Trademark Rule 11.18(b).

U.S.C. Section 1052(d). Further, a review of the notice of opposition indicates that the closest that opposer comes to alleging that applicant's mark falsely suggests a connection with opposer is in paragraph 7, wherein opposer states as follows: "The use by applicant of the trademark IDTRAC is likely to result in confusion, mistake or deception with Opposer's TRACKING family of trademarks, or in the belief that applicant or its products/service are in some way legitimately connected with, licensed or approved by Opposer." We will treat this paragraph as intending to set forth a claim under Section 2(d) only and not as alleging in addition a claim of a false suggestion of a connection with opposer under Trademark Act Section 2(a), 15 U.S.C. Section 1052(a). Accordingly, we will treat applicant's motion as seeking dismissal only of opposer's pleaded Section 2(d) claim.

A motion for judgment on the pleadings is a test solely of the undisputed facts appearing in all the pleadings, supplemented by any facts of which the Board will take judicial notice. For purposes of the motion, all well-pleaded factual allegations of the non-moving party must be accepted as true, while those allegations of the moving party which have been denied (or which are taken as denied, pursuant to Fed. R. Civ. P. 8(b)(6), because no responsive pleading thereto is required or permitted) are deemed false.

Conclusions of law are not taken as admitted. See *Baroid Drilling Fluids Inc. v. SunDrilling Products,* 24 USPQ2d 1048 (TTAB 1992). All reasonable inferences from the pleadings are drawn in favor of the nonmoving party. *Id.* A judgment on the pleadings may be granted only where, on the facts as deemed admitted, there is no genuine issue of material fact to be resolved, and the moving party is entitled to judgment on the substantive merits of the controversy, as a matter of law. *Id.*

Applicant, relying primarily upon *Ava Enterprises Inc. v. P.A.C. Trading Group Inc.*, 86 USPQ2d 1659 (TTAB 2008), seeks entry of judgment on the pleadings on the basis of dissimilarity of the marks at issue. However, *Ava Enterprises* is distinguishable because the marks at issue therein, BOSS AUDIOSYSTEMS and PAC BOOSTER THE PERFECT SOUND, did not share a common term. See *id.* at 1661. In this case, the marks at issue all share the TRAC/TRACK formative. Keeping in mind that, for purposes of applicant's motion, all reasonable inferences from the pleadings are drawn in favor of the nonmoving party, we are unwilling to enter judgment on the pleadings based solely on the alleged dissimilarity of the marks. Rather, in view of the denials set forth in applicant's answer, there are disputed facts herein which render inappropriate disposition of this case by judgment on the pleadings. In view of the

foregoing, applicant's motion for partial judgment on the pleadings is denied.

We note that opposer has recently filed several notices of opposition against third party intent-to-use applications wherein it sets forth highly similar, if not essentially identical, claims to those pleaded in the notice of opposition. See, e.g., Opposition Nos. 91189246, 91189659 and 91191343. Opposer is reminded that, under Trademark Rule 11.18(b),

> [b]y presenting to the Office ... any paper, the party presenting such paper ... is certifying that ... [t]o the best of the party's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, ... [t]he paper is not being presented for any improper purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of any proceeding before the Office; ... [and t]he allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

See also Fed. R. Civ. P. 11(b); TBMP Section 527.02 (2d ed. rev. 2004). Rule 11.18(b) does not permit a party to file repeatedly what is essentially a form complaint which set forths a series of identical claims in the hope that the pleader might, at some point, find evidence to support each of the claims set forth therein. Accordingly, unless opposer knows of facts that support each of the claims herein or has a good faith belief that evidence showing the factual basis for those claims is likely to be obtained

after a reasonable opportunity for discovery or investigation, opposer should withdraw those claims.

Proceedings herein are resumed. Dates herein are reset as follows.

Initial Disclosures Due	**12/12/09**
Expert Disclosures Due	**4/11/10**
Discovery Closes	**5/11/10**
Plaintiff's Pretrial Disclosures	**6/25/10**
Plaintiff's 30-day Trial Period Ends	**8/9/10**
Defendant's Pretrial Disclosures	**8/24/10**
Defendant's 30-day Trial Period Ends	**10/8/10**
Plaintiff's Rebuttal Disclosures	**10/23/10**
Plaintiff's 15-day Rebuttal Period Ends	**11/22/10**

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 the taking of testimony. Trademark Rule 2.l25.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.l29.

If either of the parties or their attorneys should have a change of address, the Board should be so informed promptly.