

Goodman

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

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed: October 12, 2012

Opposition No. 91201911

GREAT WHITE SHARK ENTERPRISES,  
INC.

v.

BRICK CITY 21 LLC

Before Quinn, Ritchie and Kuczma, Administrative Trademark  
Judges.

By the Board:

Brick City 21 LLC ("applicant"), which is proceeding  
pro se in this case, has filed an application to register



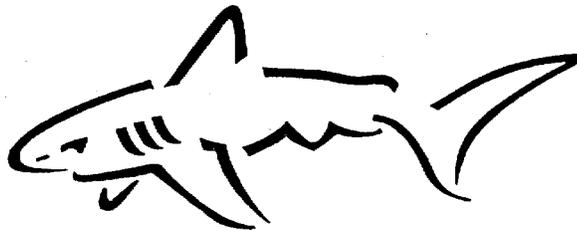
the mark for "casual clothing and  
garments, namely, shirts, pants, shorts, hooded sweatshirts,  
hats, bandanas, jackets and sweatshirts" in International  
Class 25.<sup>1</sup> Great White Shark Enterprises, Inc., ("opposer")

---

<sup>1</sup> Application Serial No. 77963257, filed March 19, 2010,  
asserting a date of first use and use in commerce as of February  
10, 2010.

Opposition No. 91201911

has opposed registration on the ground of priority and likelihood of confusion. Opposer alleges use of "a designation comprised of a shark (the 'Greg Norman Logo')" since at least as early as December 1992 "in conjunction with clothing, particularly casual clothing and activewear, and various other goods and services." Opposer has also pleaded ownership of multiple registrations for the Greg Norman Logo including Registration No. 2361139 for the following mark:



for "apparel, headwear" in Class 25.<sup>2</sup>

In its answer, applicant has denied the salient allegations in the notice of opposition.

This case now comes up on opposer's motion, filed June 12, 2012, for partial summary judgment on the issues of standing, priority and two likelihood of confusion *du Pont* factors<sup>3</sup>, namely similarity of the parties' goods and similarity of the channels of trade and classes of

---

<sup>2</sup> Registration issued June 27, 2000; renewed.

<sup>3</sup> *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973).

purchasers. Opposer has not sought partial summary judgment on any other *du Pont* factors.

A party is entitled to summary judgment when it has demonstrated that there is no genuine dispute as to any material fact and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). In reviewing a motion for summary judgment, the evidentiary record and all reasonable inferences to be drawn from the undisputed facts must be viewed in the light most favorable to the nonmoving party. *Olde Tyme Foods Inc. v. Roundy's Inc.*, 961 F.2d 200, 22 USPQ2d 1542, 1544 (Fed. Cir. 1992).

In support of its motion, opposer has submitted copies of electronic TARR and TESS reports from the USPTO website for Registration No. 2361139 confirming its ownership and the current status of the Registration.

#### Standing

Turning to the merits of the motion for partial summary judgment, we first determine opposer's standing to bring this opposition proceeding. Standing is a threshold issue that must be proven by a plaintiff in every inter partes case. *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023 (Fed. Cir. 1999). We find that opposer's standing to bring this opposition proceeding is undisputed by applicant<sup>4</sup> and

---

<sup>4</sup> Applicant's arguments in paragraph 2 although titled "Standing and Priority" address priority but not the standing issue.

Opposition No. 91201911

is established by the TARR and TESS printouts for pleaded Registration No. 2361139. *Lipton Industries, Inc. v. Ralston Purina Company*, 670 F.2d 1024, 213 USPQ 185, 189-190 (C.C.P.A. 1982); see also *Edwards Lifesciences Corp. v. VigiLanz Corp.*, 94 USPQ2d 1399, 1408 (TTAB 2010) (pleaded registration made of record establishes standing).

Accordingly, we find no genuine dispute of material fact that opposer's standing has been established.

#### Priority

We will now turn to the question of priority. Although applicant has made some arguments as to opposer's priority, we find that opposer's submission of electronic TARR and TESS reports of its pleaded Registration No. 2361139 removes the issue of priority with respect to the goods "apparel, headwear." *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974).

Accordingly, we find no genuine dispute of material fact that opposer's priority has been established with respect to the pleaded registration and the goods "apparel, headwear."

#### Likelihood of confusion

We now turn to the issue of likelihood of confusion with respect to *du Pont* factors, two and three, similarity or dissimilarity and nature of the goods or services and similarity or dissimilarity of established or likely to

continue trade channels. *In re E. I. du Pont de Nemours & Co.*, 177 USPQ at 567. We must decide, for purposes of the present motion, whether there are any genuine disputes of material fact regarding *du Pont* factors numbers two and three that would need to be resolved at trial.

Consideration of these factors is based on the goods recited in applicant's application vis-à-vis the goods identified in opposer's pleaded registration. *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1783, 1815 (Fed. Cir. 1992). The respective identification of goods in applicant's application and the goods in opposer's registration may of themselves be evidence as to the relatedness of the parties' goods. *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002).

Opposer has argued that the parties' goods are similar because applicant's goods fall within the scope of opposer's goods as identified and that the channels of trade for the parties' goods are the same because the parties' goods are legally identical.

Applicant, on the other hand, has argued that it offered to amend its identification of goods, and that the parties' channels of trade are different because applicant sells its goods at poker tournaments to individuals ranging in age from 35 to 69 who compete in poker tournaments and

Opposition No. 91201911

watch poker championships while opposer sells its goods at golf shops, golf boutiques and department stores to consumers whose ages range between 16 to 30.

*Similarity or Dissimilarity of the Nature of the Parties' Goods*

When goods in a registration are broadly described and there are no limitations in the identification goods as to their nature, it is presumed that the goods encompass all goods of the nature and type described. *Canadian Imperial Bank of Commerce*, 1 USPQ2d at 1815-1816; *In Rocket Trademarks Pty Ltd. v. Phard S.p.A.*, 98 USPQ2d 1066, 1073 (TTAB 2011) (citations omitted).

With respect to the relatedness of the parties' goods, opposer's pleaded Registration No. 2361139 identifies its goods as "apparel, headwear." See TARR and TESS reports. Applicant's goods are identified in application Serial No. 77963257 as "casual clothing and garments, namely, shirts, pants, shorts, hooded sweatshirts, hats, bandanas, jackets and sweatshirts." The broad term "apparel" in opposer's registration encompasses all types of clothing and "headwear" encompasses all types of "hats."

We find that there is no genuine dispute of material fact that the parties' goods are legally identical. *Cf. Big M. Inc. v. The United States Shoe Corporation*, 228 USPQ 614 (TTAB 1985) (retail store services featuring women's sportswear and retail store services featuring women's

apparel and accessories legally identical because broad term apparel necessarily includes sportswear).

*Similarity or Dissimilarity of the Channels of Trade/Classes of Purchasers*

With respect to the channels of trade and classes of purchasers, there are no restrictions in either applicant's identification or the identification in opposer's Registration no. 2361139. Therefore, it is presumed that the identifications encompass all goods of the type described, that they move in all normal trade channels for such goods, and that they are available to all potential consumers for such goods. *Paula Payne Products Co. v. Johnson Publishing Co.*, 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973). In addition, because the goods in opposer's registration and applicant's involved application are legally identical, such goods are presumed to travel in similar trade channels and to be purchased by the same classes of consumers. *See Genesco Inc. v. Martz*, 66 USPQ2d 1260, 1268 (TTAB 2003) (Where goods in applicant's application were in-part identical to those in registrant's registration, lack of restrictions as to trade channels or purchasers gives rise to presumption that goods "could be offered and sold to the same classes of purchasers through the same channels of trade").

Accordingly, we find that there is no genuine dispute of material fact that the parties' channels of trade and classes of purchasers are overlapping.

Decision

We find based on the record herein and the applicable law, that there is no genuine dispute of material fact that opposer has established its standing, priority, the relatedness of the parties' goods and overlapping channels of trade and classes of purchasers. Opposer's motion for partial summary judgment is granted, as to standing, priority, similarity of the parties' goods, channels of trade and classes of purchasers.<sup>5</sup>

Given the limited issues remaining in dispute in this case, the parties may wish to consider accelerated case resolution. See TBMP Sections 702.04 and 705 (3d ed. rev. 2012) for more information.

Proceedings are resumed.

Dates are reset as follows:

Plaintiff's Pretrial Disclosures Due	<b>11/25/2012</b>
Plaintiff's 30-day Trial Period Ends	<b>1/9/2013</b>
Defendant's Pretrial Disclosures Due	<b>1/24/2013</b>
Defendant's 30-day Trial Period Ends	<b>3/10/2013</b>
Plaintiff's Rebuttal Disclosures Due	<b>3/25/2013</b>
Plaintiff's 15-day Rebuttal Period Ends	<b>4/24/2013</b>

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits,

---

<sup>5</sup> No further evidentiary submissions are necessary at trial on these issues.

Opposition No. 91201911

must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

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 2.129.