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

Proceeding	91203191
Party	Plaintiff Future Ads LLC
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL & APPEAL BOARD**

FUTURE ADS LLC)	
)	
Opposer,)	
)	
v.)	Opposition No.: 91203191
)	
Kent G. Anderson)	Serial No. 76/133,905
)	
Applicant)	
_____)	

OPPOSER’S REPLY BRIEF

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I. ARGUMENT

Opposer Future Ads LLC established in its trial brief that Applicant Kent G. Anderson lacked a bona fide intent to use the mark shown in application 76/133,905 at the time of filing. Opposer also established that Anderson committed fraud upon the USPTO by declaring a bona fide intent to use the mark on all the goods in the application. Applicant's responsive trial brief cites no evidence to support a bona fide intent or to otherwise counter Opposer's contentions, for the simple reason that Applicant has not introduced any evidence in the proceeding properly. The new mass of documents that Applicant has submitted do not constitute competent or admissible evidence, and represent a new effort to ignore or circumvent the Board's procedural rules by introducing documents that were not disclosed in discovery or introduced in the testimony period. For these reasons and as set forth in Opposer's trial brief, the opposition should be sustained.

A. Applicant Did Not Have A Bona Fide Intent To Use The FUTURE Mark On At Least The Opposed Goods At The Time He Filed The Application

Opposer's evidence shows that Applicant's behavior—serially and concurrently filing for multiple ITU-based applications without ever developing or using them; filing unrealistically broad identifications of goods and/or services; abandoning or permitting default judgment in multiple applications after requesting numerous extensions of time and/or failing to participate in contested proceedings; and lacking any material objective proof of his bona fide intent to use the FUTURE mark—is exactly what the legislature intended to prevent when it required that ITU applicants attest to a bona fide intent to use marks. The burden thus shifts to Applicant to introduce and explain competent, admissible evidence, contemporaneous with his application, which is sufficient to establish intent to use. He has provided none.

Given the complete absence of corroborating evidence, Applicant's contention that he possessed a bona fide intent to use the FUTURE mark at the time of its filing is without merit. Numerous case decisions have recognized that evidence such as the following is needed to show a bona fide intent to use: “product or service research or development, market research,

manufacturing activities, steps to acquire distributors, steps to obtain required governmental approval, or other similar activities.” McCarthy, *supra* § 19: 14 at 19-47. Applicant has not done any of these things—certainly not to the extent that a legitimate business would, even at the difficult start-up phase. Applicant has not introduced any documents showing that, at the time of filing the application, it had performed any such activities or steps relating to the FUTURE mark for any of the opposed goods, much less for all the goods in International Classes 1 to 34.

Applicant’s trial brief states that he placed ads in a publication of the Writers Guild of America, the Beverly Hills Courier, and Bull and Bear. Applicant’s Trial Brief (“App. Brief”), p. 4. The Board should reject this contention. None of the documents that Applicant cites were introduced into evidence pursuant to the applicable rules. None of the documents have been proven to be in existence at the time the application was filed. Even if the ads are considered admissible, they are no more than mere solicitations to invest, and not a genuine business offer to license a brand for specific goods or services.

Applicant also claims that he “did have brochures and business cards printed at a local printing company” – App. Brief, p. 28 – but he presents no documentary evidence to support this allegation. Applicant has neither produced the brochures and/or business cards, nor presented justifiable excuse for the failure to produce. Applicant’s self-serving statements alone cannot substitute for the need for evidence. In fact, the Board has held that the absence of any documentary evidence of an applicant's bona fide intention to use a mark in commerce is sufficient to prove that an applicant lacks such intention as required by Section 1(b), unless other facts are presented which adequately explain or outweigh applicant's failure to provide such documentary evidence. *Honda Motor Co., Ltd. v. Friedrich Winkelmann*, 90 USPQ2d 1660 (citations omitted); *Spirits International, B.V. v. S.S. Taris Zeytin Ve Zeytinyagi*, Opp. No. 91163779 (TTAB July 6, 2011), slip op. at 9.

Similarly, the suggestion that Anderson relied on the “business avenues of facebook, twitter, my space, link in you tube, to name some,” – as stated in App. Brief, p.4 – does not

constitute actual evidence of relevant business activity in which Applicant was engaged at the time the application was filed.

Applicant also cites unsolicited letters that he allegedly sent to various executives, organizations and corporations long after the filing date of his application. (Many date from late 2013, when Applicant presumably realized he had a problem establishing intent and set about trying to “cure” his lack of evidence.) None is admissible or reliable; none establishes a bona fide intent to use the mark contemporaneous with the filing of the application. Moreover, virtually none mentions licensing, because most are solicitations for funds or legal aid, or are ambiguous and unclear about what they request. Applicant has made no serious efforts to license the mark or his application.

Applicant also submitted a copy of a License Agreement dated August 10, 2002 pertaining to a US Patent. This document was not disclosed in discovery, was not properly admitted into evidence, lacks foundation, and therefore it is inadmissible. The Board should disregard it.

Applicant’s best hope is a web page at www.geocities.com/visionaryman2000/index.html, and a website www.futurevisionaries.com, which were produced in discovery. But neither provides sufficient proof of a bona fide intent to use the mark on all the goods in Classes 1-34—or even the classes that Opposer is opposing. Collectively, the web pages convey only generalized ideas about “global intellectual property where people can license...”; they do not provide any concrete information such as a form of license agreement or summary of license terms, what products Applicant wants to license, how he would exercise quality control, or other business terms.

In his trial brief, Applicant states that “A very broad list of goods/services should not, in itself, be taken to imply any lack of bona fide intent . . .” App. Brief, pp. 3, 30. The contention is without merit. The excessive breadth of Applicant’s original identification of goods and services also is objective evidence of lack of intent to use. In fact, the legislative history of the ITU statutory provisions suggests exactly the opposite—that the filing of numerous ITU applications

with the USPTO for marks covering the same goods and services might well cast doubt on an applicant's bona fide intention to use the marks. Senate Judiciary Committee Report on S.1883, S. Rep. No. 100-515, pp. 23-24 (Sept. 15, 1988).

In his trial brief, Applicant explicitly admits his limited business knowledge and financial resources to use the mark in interstate commerce. App. Brief, pp. 5, 27. Applicant's contention—that "limited business knowledge or limited financial backing, such things are not, and in law have never been, a bar to the granted a trademark registration"—also is without merit and is not supported by any authority. Applicant states that his "ultimate goal" is "use solely through licensing", but Applicant has failed to produce any satisfactory documentary evidence showing resources and ability to conduct a licensing operation. Applicant admits that "the search for financial backing and business knowledge is ongoing", App. Brief, p. 27, and that "the budget will be determined upon the organization of global FUTURE-FUTURE COUNTRY", App. Brief, p. 27. These statements reveal Applicant as the kind of mere dreamer that the statute is designed to exclude. A mere statement of subjective intent alone is never sufficient to establish bona fide intent to use. *Lane Ltd. V. Jackson International Trading Co.*, 33 USPQ2d 1351, 1356 (TTAB 1994); *Honda Motor*, 90 USPQ2d 1660.

B. Applicant's Trial Brief is Submitted with No Admissible Evidence

With his trial brief, Applicant filed a large number of documents that either have not been previously produced in this proceeding, or that have been excluded by the Board's Order of January 8, 2014.

For the same reasons set forth in Opposer's Motion to Strike of October 3, 2013, and pursuant to 37 CFR §§2.120, 2.122 and 2.123, and TBMP §§704, 706 and 707, Opposer objects to the following documents submitted by Applicant with his trial brief as inadmissible, not relevant, and/or otherwise incapable of consideration by the Board. In particular, the Board should exclude from evidence:

- License Agreement of August 10, 2002 related to US Patent 5,548,274. (Even if admissible, this document would be irrelevant, as the subject of the patent—a strobe light for a vehicle tire and wheel—isn't within the scope of the opposed goods.)
- Letter dated June 1, 2000 from Brandford Licensing Associates;
- Letter dated April 10, 1998 to Kim Thayer;
- Letter dated March 8, 1997 to Scholastic Productions;
- Letter dated March 7, 1995 to Western Publishing Company, Inc.;
- Letter dated January 30, 1995 from Delaney Product Development;
- Letter dated March 30, 1993 from the Governor Edward T. Schafer;
- Classified Advertisement Confirmation Report Playthings dated May 11, 2000;
- Letter dated April 12, 1993 from The Dial Corp Consumer Products Group;
- Letter dated April 19, 1993 from Lever Brothers Company;
- “Future Island Project” incorporating business plan and license agreement, unsigned and undated;
- Investment Agreement of 2003, unsigned, between Applicant and HRH Prince Abdullah Bin Abdul Aziz Al Saud of Saudi Arabia.

As attested in the attached declaration of Opposer's trial counsel none of the foregoing documents was produced during discovery. See Declaration of Christopher J. Palermo, ¶¶2-4. Applicant's submission of these documents is not grounded in any trademark rule or statutory authority. Section 2.123 of Title 37, CFR and TBMP §706 provide that “evidence not obtained and filed in compliance with the rules of practice governing inter proceedings before the Board will not be considered by the Board.” See also *Original Appalachian Artworks Inc. v. Streeter*, 3 USPQ2d 1717, 1717 n.3 (TTAB 1987); *Binney & Smith Inc. v. Magic Marker Industries, Inc.*, 222 USPQ 1003 (TTAB 1984); *Industrial Adhesive Co. v. Borden, Inc.*, 218 USPQ 945 (TTAB 1983); *Angelica Corp. v. Collins & Aikman Corp.*, 192 USPQ 387 (TTAB 1976). Applicant failed to timely produce the documents in the required manner and pursuant to the applicable rules. Moreover, the Board has already cautioned Applicant in its Order of January 8 that briefs

cannot be used to introduce new evidence. In any other forum, Applicant's blatant ignorance of that order would subject Applicant to sanctions and perhaps Opposer's fees and costs.

Therefore, the documents are inadmissible in this proceeding and should be excluded.

CONCLUSION & PRAYER FOR RELIEF

Opposer has adduced ample evidence and argument to establish that Applicant, at the time the application was filed, lacked a bona fide intent to use the FUTURE mark in interstate commerce, and committed fraud upon the USPTO by declaring a bona fide intent to use the mark on all the goods at the time the application was filed. Applicant has produced no admissible or sufficient evidence to support a bona fide intent. The Board should hold Applicant's application as void ab initio. The opposition should be sustained and the Board should refuse registration of the mark.

Dated: February 10, 2014

Respectfully submitted,

FUTURE ADS LLC

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CERTIFICATE OF SERVICE BY MAIL

I hereby certify that a true and complete copy of the foregoing Opposer's Reply Brief has been served on Applicant, Kent G. Anderson, unrepresented/pro se, by United States First Class Mail with postage affixed thereon and fully prepaid, on February 10, 2014 to:

Kent G. Anderson
925 N. Griffin
Bismarck, ND 58501

By /ChristopherJPalermo/
Christopher J. Palermo
Attorney for Opposer

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v.)	Opposition No.: 91203191
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Kent G. Anderson)	Serial No. 76/133,905
)	
Applicant)	
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DECLARATION OF CHRISTOPHER J. PALERMO

I, CHRISTOPHER J. PALERMO, declare:

1. I am an attorney for the Opposer Future Ads LLC and I am familiar with this opposition proceeding. I make this declaration in support of Opposer’s Reply Brief, dated February 10, 2014. I am over the age of 18 and competent to make a declaration in this jurisdiction. The facts stated in this Declaration are within my personal knowledge and true.

2. On January 27, 2014, Applicant Kent G. Anderson filed with the Board and served Applicant’s Trial Brief with a large number of supporting documents, some of which have not been previously produced in this proceeding.

3. Applicant did not produce during discovery or trial period, but submitted and served for the first time with his Trial Brief, the following documents: License Agreement of August 10, 2002 related to a US Patent 5,548,274; Letter of June 1, 2000 from Brandford Licensing Associates related to The Coconut Kids licensing program; Letter of April 10, 1998 to Kim Thayer regarding the new generation of Barbie; Letter of March 8, 1997 to Scholastic Productions; Letter of March 7, 1995 to Western Publishing Company, Inc.; Letter of January 30, 1995 from Delaney Product Development; Letter of March 30, 1993 from the Governor Edward T. Schafer, State of North Dakota; Classified Advertisement Confirmation Report Playthings dated May 11, 2000; Letter of April 12, 1993 from The Dial Corp Consumer Products

Group; Letter of April 19, 1993 from Lever Brothers Company; "Future Island Project" incorporating business plan and license agreement, unsigned and undated; Investment Agreement of 2003, unsigned, between Applicant and HRH Prince Abdullah Bin Abdul Aziz Al Sand.

4. VERIFICATION. The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or any resulting registration, declares that all statements in this declaration made of her own knowledge are true and all statements in this declaration made on information and belief are believed to be true.

Executed this 10 day of February, 2014, at San Jose, California, U.S.A.

By



Christopher J. Palermo