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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Future Ads LLC
v.
Kent G. Anderson

Opposition No. 91203191
to application Serial No. 76133905
filed on September 22, 2000

Christopher J. Palermo of Hickman Palermo Truong Becker Bingham
Wong LLP for Future Ads LLC.

Kent G. Anderson, *pro se*.

Before Quinn, Greenbaum and Hightower,
Administrative Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

Kent G. Anderson ("applicant") filed an application to
register the mark **FUTURE** (in italic block letters as depicted
below)

FUTURE

for numerous goods now identified and classified in twenty-two
International Classes, including 9, 16 and 28. The application

was filed over thirteen years ago, and is based on an allegation of a bona fide intent to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

Future Ads LLC ("opposer") opposed registration of applicant's mark for the goods listed in International Classes 9, 16 and 28 on the grounds of no bona fide intent to use the mark in commerce, and fraud. So as to be clear, opposer did not oppose registration in the remaining nineteen classes.

Applicant, in his answer, essentially denied the allegations in the notice of opposition.¹

Applicant's identification of goods in the opposed classes reads as follows:

International Class 9:

Blank magnetic data carriers, namely, recording disks; automatic vending machines and mechanisms for coin operated apparatus, cash registers, calculating machines, data processing equipment, data processors and computers; fire extinguishers; blank magnetic data carriers, cell phones, telephones, personal computers, computers, television and cable set-top boxes; VCRs, car stereos, camcorders, video cameras, TV cameras, electric cables, video converters, televisions, motion picture cameras; movie projectors, satellite systems comprised of antennas, radio stereo tuners and audio speakers, enclosure for speakers; slide projectors, radio receiving apparatus,

¹ The answer is accompanied by voluminous documents. These exhibits are not evidence on behalf of applicant. Trademark Rule 2.122(c); Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), § 317 (3d ed. rev. 2 June 2013).

microphone and electric switches, intercoms; wireless room monitors, sound receivers, amplifiers, turntables, walkie-talkies, CD players, compact discs players, digital video disc players, digital video recorders, video game consoles for connecting to a TV set or computer display, radios, phonographs, radios incorporating clocks and video cameras; prerecorded audio cassettes and pre-recorded audio tape featuring music; prerecorded video tapes featuring science fictions films; blank compact disc, video game cartridges, video game machines for use with televisions; video game software; prerecorded audio and video tapes featuring music, musical artist, bands, vocalist, entertainers, live performances, science fiction and reality films; computer disc, CD-ROMS, video discs, laser discs, DVD discs, music video discs, and records featuring science fiction films and entertainment, music and motivational recordings; computer workstations comprising computer hardware; notebook computers, laptops, desktop computers, modems, mouse; operating system software; server software for use in server based e-mail processing and for use in web server optimization and for use in creating information portals deployed on the Internet, network management software for use in server based e-mail processing, for use in web server optimization; computer utility programs; computer software development tools; computer software for use in security and authentication; computer programs for operating computer peripherals, hand held computers, personal digital assistants, radio pagers, game consoles, digital video disc (DVD) players, digital video recorders, and public communication kiosks; application and business software, namely, platforms for programming and application development software for developing multi language programs; software for validating programs; game software for use on computers and video game players; browser software for computer

networks and global communication networks; computer programs for managing communication and data and information exchange over computer networks; software for use in web interactive educational software with entertainment components for facilitating the understanding and application of scientific or language arts information, problem solving skills, and/or identification and retention of informing and accompanying materials distributed as a unit; microcomputers, microprocessors, microchips, word processor and spreadsheet software; memory cards, interactive video game programs; interactive multimedia computer game programs, computer game software and hardware; components, namely, electronic computers, peripheral adapters, electrical connectors; CD-ROM featuring music videos, science fiction and reality games; interactive computer game software; interactive video games of virtual reality comprised of computer hardware and software, children's educational software and videotapes, communication servers, computer and video game apparatus adapted for use with television receivers and accompanying manuals; printers, laser printers, lasers not for medical use, holders for compact disks, integrated circuit chips for use as component for the game software, integrated circuits, jackets for computer disks; and hand held personal computers, joysticks for video games, electronic personal organizers and industrial process control software, facility management software, facsimile machines, computer screen saver software, computer search engine software, computer screen filters, computer commerce software to allow use to perform electric business transactions via a global computer network, computer fax modem cards, computer game equipment containing memory device, namely, discs, computer interface boards, computer game graphics and interface boards, computer network hubs, CD drives for computers, digital video drives, digital cameras,

digital radios, computer operating system back-up systems for computers, video game machine for use with televisions, dry cell batteries, sunglasses, carrying cases for portable electronic devices, headphone, audio cassette players and recorder; CD players, and DVD players, magnets sub woofers, remote controls for radios, stereos and television sets, blank video tapes, photographic slide transparency, covers for telephones not made of paper, magnetic encoded telephone calling cards and transportation cards, electronic telephone answering machines, telephone amplifiers, and radios; blank audio and video recording tapes, keyboards, electronic keyboards, video displays in the nature of CRT for use in the connection with computer displays to computer, data cassette recorders, resistance wires, compasses, telescope, eye glasses, microscopes, magnifying lens photocopy machines, battery testers, DC power supplies, and electrical components, namely, connectors, wires, router clips, switches transistors, resistors, amplifiers for each regulator circuits and system processor, electric switch signal amplifier, auto built noise filter, car odometers, tire balancing machines, tire pressure gauges, speedometers for vehicles, and cruise control units for vehicles, automobiles, aircraft, land craft, water craft, and spacecraft; telephone equipment, namely, telephone plugs, telephone jacks, telephone wires, mobile data receivers, digital phones and cords; warning devices, namely, motion detectors, theft alarms, smoke alarms, fire alarms and fire trucks; camcorder tripods, cable TV converter, electric door chimes, thermostats, AC power cords, audio connectors, audio connection adapters, power transformers, AC DC voltage adapters, DC power transmitters, transducers, transistors, transceivers; sports goggles, sport whistles, sports helmets; swimming goggles, scales for laboratory use, semiconductor devices and chips, signal

processors, silicon chips, sirens, slide projectors, slot machines, sonar specialty holders for carrying cellular phones, pagers, personal digital assistants and receivers; chargeable electric batteries, regulator for use in scuba diving, remote cursor controls for computers, rifle scopes, satellite processors, satellite navigational system, namely, a global positioning system, computer network interface devices, printed circuit boards, electric cables, programmable digital television recorders, projections screens, public address systems, radio frequency controlled locks, radon detectors, reading glasses; portable listening devices, namely, CD and MP3 players, electric cords and blank videotapes; pressure gauges, preamplifiers; optical character recognition apparatus magnetically encoded credit circuit cards, parking meters, periscopes, microwave ovens for laboratory use; electric door openers, electronic game programs, gaming machines, electronic safes, emergency warning lights, garment steamers, timers, electric door bells, electric light switches, carbon dioxide detectors, cash registers, compasses, blank electronic chips, underwater breathing apparatus, bicycle helmets, beepers in the nature of pagers, football helmets; electric hair curlers, irons, hot brushes, combs; electric signs; guitar amplifiers, CD players and compact disc players; audio cassette decks for simulators; vehicle locating, tracking and security system comprised of an antenna and radio transmitter to be placed in a vehicle; motion picture films in the films of documentaries and education; wireless remote control units, used for radios, televisions, stereos, video games, DVD players multi-media software recorded on CD ROM used for education and music; educational software featuring instruction in math, reading, language arts, science, social studies; encoded smart cards and encoded electronic chip cards containing programming using

layout data on magnetic strip cards, for creating custom cards and for use as encoded credit cards, encoded debit cards, and pre-paid encoded telephone cards; wireless remote control units for use with climate control, systems consisting of digital thermostats, remote cursor control for computers; electronic publications, namely, books, magazines, manuals all in the field of medicine, technology, and education recorded on computer media; security systems comprising of facilities management software, computers, timers, security monitors; optic vehicle locking systems comprising of laser detector, namely, modulated laser lights from keys, optic detector, optical transmitter, optical receiver, cables for optical signal transmission, vehicle cylinders, electronic warning horn and electronic locks; programmable locking system consisting of electronic cylindrical lock sets and keypads using radio frequency device, remote door lock/unlock, backup battery; band equipment, namely, guitar amplifiers, instrument amplifiers and sound mixers;

International Class 16:

Paper, cardboard and goods made from these materials, namely, boxes, stationery, newsprint, tablets, notebooks, card stock; bookbinding material, namely, book binding covers, paper, tape and wire; mounted photographs; stationery; adhesives for stationery or household purposes, artists' materials, namely, paint brushes; office requisites except furniture, namely, typewriters; printers' type and printing blocks; printed matter, namely, newspapers and novels, children books, story books, posters, stamps, poster books and comic books; books concerning sports, financial, transportation, education entertainment, retail, hospitality, health care, syndicated columns dealing with editorial advice, life sports and special interest topics;

stickers, postage stamps, gift cards, greeting cards, trading cards, paper goods and printed matter, namely, address books, books containing screen plays, scrapbooks, diaries, invitations, personal organizers, activity books, greeting cards, books for role-playing art books, coffee table books, travel book, religious books, romance novels, printed menus, printed paper signs, recipe books, printed art reproductions, lithographic prints, printed awards, printed certificates, printed emblems, printed forms, pictorial prints, picture books, picture postcards; newspaper cartoons, hotel directories, encyclopedias, general feature magazines, sketches, portraits, photo engravings, graphic art reproductions, graphic novels, hectographs, motivational cards, musical greeting cards, illustrations, etchings and autographs of famous people, coloring books, computer game manuals, cook books, architectural plans and specifications; baby books, crossword puzzles, Christmas cards, phone books, city directories; books in a variety of products, namely, entertainment, finance, education, hobbies, aircraft, computer programs, and blue prints; bumper stickers, anniversary books, announcement cards, book plates, book marks, checkbook holders and covers, non-electric personal planners and organizers, stationery, paper dolls books, paper gift tags, cardboard figures, temporary tattoos; school office supplies, namely, erasers, pencils, pens, markers, pencil cases, pencil sharpeners, pocket pen shields, fountain pens, pocket secretaries, portable desks, paperboard, paperweights, pen and pencil trays, pen cases, pen and pencil holders, ball point pens, felt tip pens, rubber bands, rubber stamps, notepads, paper clip holders, paper clips, paper cutters, paper containers, paper envelopes, paper fasteners, notepads, label printing machines, leather book cover, letter openers, office supplies and products, namely, dividers for files, mechanical

binders, holders for desk accessories,
folders, office lettering machines; and

International Class 28:

Games and playthings, namely, toy dolls, toy action figures, stuffed toys, plush toys, bendable toys, mechanical toys, inflatable toys, electronic action toys, board games, card games, hand held units for playing electronic games, arcade games, infant toys, sand toys, ride-on toys, radio controlled toys vehicles, sketching toys, stuffed toy animals, toy cooking ware, doll clothing, pop-up toys, soft sculpture toys, water toys, construction toys, wind-up toys, action skilled games, toy pails, balloons, toy candy dispensers and holders, toy vehicles, stand-alone video game machine; high bounce balls, Christmas tree decorations; costume masks, paper face masks, toy pedal cars, play sets for action figures, play sets for toy vehicles, skateboards, dimensional puzzles, playing cards; gymnastic and sporting articles, namely, golf clubs, baseball bats, soccer balls, soccer nets, hockey sticks, hockey pucks, footballs, tennis nets, tennis rackets, tennis balls, golf balls, soccer balls, basketballs, basketball nets, kick balls, badminton nets, badminton rackets, jump ropes.

Evidentiary Record

We first direct our attention to evidentiary issues related to applicant's submissions. The Board, in an order dated January 8, 2014, stated the following:

It is noted that applicant is no stranger to *inter partes* proceedings at the Board. Board records indicate that applicant has, since 2003, been involved in multiple opposition and cancellation proceedings. *See, for example,* Opposition Nos. 91157538,

91158059, 91173923, 91184059, 91184524, 91192939, 91195950, 91196980, and 91204213, and Cancellation Nos. 92050325, 92050700, 92051931, 92052927, and 92053413. Moreover, applicant has, prior to the filing of any of the papers at issue in this order, been advised that *pro se* parties are expected to familiarize themselves and comply with Board procedures, the Trademark Rules, and the Federal Rules of Civil Procedure applicable to Board proceedings. See Board order dated September 24, 2012, issued in Opposition No. 91204213. Similarly, applicant has been warned about making un-captioned, vague filings and ordered to familiarize himself with the Trademark Rules and Federal Rules of Civil Procedure. See Board order dated February 28, 2013, issued in Opposition No. 91204213.

In that order, the Board carefully considered applicant's numerous separate submissions filed between January 7, 2013 and November 27, 2013. For the majority of them, the Board indicated that they were "vague" and "unintelligible" and, thus, the papers would be given no consideration. The Board also took up opposer's motion to strike applicant's submission filed on August 28, 2013 inasmuch as the filing constituted the only "evidence" submitted during applicant's testimony period. The motion to strike was unopposed, and the motion was granted as conceded under Trademark Rule 2.127(a). In view thereof, the documents filed on August 28, 2013 have not been considered.

The Board also deferred until final hearing consideration of applicant's submissions filed on November 12, 2013 and November 27, 2013 to the extent that the filings relate to

opposer's rebuttal testimony taken of applicant.² These papers, as is the case with the other filings, are unclear.

Nevertheless, to the extent we understand their purpose, we have considered the papers, but only as they relate to the rebuttal testimony (e.g., urging that opposer's requests to strike certain answers as non-responsive be denied).

Accordingly, the record consists of the pleadings; the file of the involved application; the testimony of applicant taken as an adverse witness³; and official records, excerpts of application file histories, and excerpts of applicant's website, all introduced by way of opposer's notice of reliance. Insofar as applicant's submissions are concerned, the only ones we have considered are, as indicated above, the papers filed on November 12 and 27, 2013. Applicant did not take any testimony or introduce any other evidence during its assigned testimony period. The parties filed briefs.⁴

² Opposer took the testimony of Mr. Anderson on July 11, 2013. During its rebuttal testimony period, and not yet knowing whether any of applicant's evidence would be considered, opposer took another deposition of Mr. Anderson on October 22, 2013.

³ Both of Mr. Anderson's depositions are of record.

⁴ The numerous exhibits attached to applicant's brief were not properly introduced at trial (and objected to by opposer in its reply brief) and, thus, have not been considered in reaching our decision. See TBMP §§ 704.05(b) and 801.01. Even if considered, however, the documents fall short of establishing applicant's bona fide intent to use the mark in commerce. After considering applicant's papers and brief on the case to the extent indicated above, we echo the earlier Board order in this case, sharing our interlocutory attorney's characterization of these filings as vague and mainly unintelligible.

To state the obvious, we have decided this case based on the evidentiary record. We are aware, of course, of the Board's recent decision in *Lincoln Nat'l Corp. v. Anderson*, ___USPQ2d___, (Opp. Nos. 91192939 etc., TTAB Feb. 21, 2014). In that case, the Board found, *inter alia*, that applicant lacked a bona fide intention to use the mark in commerce in connection with the services listed in Classes 35 and 36 in that subject application.

Standing

Opposer owns Registration No. 3560478, issued January 13, 2009, for the mark FUTURE ADS (in standard characters) for

entertainment services, namely, providing online computer games and tournaments; providing computer games accessible network-wide by network users; organizing, conducting and administering online computer games and tournaments whereby multiple parties play and compete against each other for monetary and other prizes for the purpose of promoting the goods and services of others; providing information in the field of online computer games; providing a website in the field of online computer games (in International Class 41).

Opposer also owns application Serial Nos. 77484077 and 77484102, which stand suspended pending the disposition of several of applicant's applications.

Opposer has properly made of record its pleaded registration as set forth above, as well as its pending applications. In view thereof, we find that opposer has a real

interest in the outcome of this proceeding and thus has a reasonable basis for believing that it would be damaged by the issuance to applicant of the registration applicant seeks in the three opposed classes. Accordingly, we find that opposer has established its standing to oppose registration of applicant's mark. See *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000); *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1026 (Fed. Cir. 1999).

Bona Fide Intent

Opposer has the burden of proving by a preponderance of the evidence that applicant lacked a bona fide intent to use the mark in commerce in Classes 9, 16 and 28 when he filed his application on September 22, 2000. See *Research In Motion Ltd. v. NBOR Corp.*, 92 USPQ2d 1926 (TTAB 2009); *Boston Red Sox Baseball Club LP v. Sherman*, 88 USPQ2d 1581 (TTAB 2008). For the reasons discussed below, we find that opposer has satisfied this burden.

The "Bona Fide Intent" Requirement

Trademark Act Section 1(b)(1) provides, in pertinent part, that "[a] person who has a bona fide intention, under circumstances showing the good faith of such person, to use a trademark in commerce may request registration of its trademark on the principal register...."

It is settled that "... the determination of whether an applicant has a bona fide intention to use the mark in commerce is to be a fair, objective determination based on all the circumstances." *Lane Ltd. v. Jackson International Trading Co.*, 33 USPQ2d 1351, 1357 (TTAB 1994).

The statutory requirement that the applicant must have a bona fide intent to use the mark in commerce at the time the application is filed "must be read in conjunction with the revised definition of 'use in commerce' in Section 45 of the Trademark Act, which the Trademark Law Revision Act of 1988 (TLRA) amended to require that such use be 'in the ordinary course of trade, and not made merely to reserve a right in a mark.'" *Commodore Electronics Ltd. v. CBM Kabushiki Kaisha*, 26 USPQ2d 1503, 1507 (TTAB 1993).

Applicant Lacked the Requisite Bona Fide Intent

First with respect to the issue of bona fide intent, we find that applicant was merely attempting to reserve a general right in his FUTURE mark when he filed his intent-to-use application.

Applicant testified that "I'm appearing here on behalf of global FUTURE and global FUTURE country and all peoples' rights and ideas throughout the world. I'm here because of those people and their ideas in this country." (Anderson dep., p. 24). Applicant indicated that "people's ideas would be the

product" and that "my mindset was to help people throughout the world." (Anderson dep., pp. 14, 17). During his deposition, applicant was questioned about his website, <futurevisionaries.com>, which applicant described as a "global intellectual property country. It's always been for the people and their ideas. It's a country. It's very - it's out-of-the-box thinking and stuff." (Anderson rebuttal dep., p. 10).

The following are representative excerpts from the website:

I am Kent Anderson, founder and president of Future Enterprises. I am dedicated to our future. I see a more highly advanced world. I am very creative, hold many patents, enjoy inventing, and am a prolific thinker. Leadership value qualities, integrity and my love and fascination with ideas in inventing, and thinking of a futuristic world.

There needs to be forth [sic] entity a place that people can market, test their ideas in any marketing sector focused towards our future. I am in the process of building this corporation, and have spent many years on it.

This will be a large undertaking, and will provide a huge marketing arena, with many opportunities available. To test and to market, invest in properties to launch new industries, new products, and new services under the name Future.

Our goal is to secure rights globally to the brand FUTURE, to create global opportunities from the brand so that all people can benefit from the brand FUTURE with their ideas and dreams. Global organizations and companies affiliated with brand FUTURE will create global resources and infrastructures

that will allow development of new ideas and a means for new industries to be developed. Global benefits will be created for all people.

The global infrastructure built with the brand FUTURE would be able to support their efforts with knowledge and resources. By working together with the brand FUTURE and sharing by licensing ideas and products to each other, each individual will benefit from the brand FUTURE. Companies and individuals will be allowed separately to benefit from the FUTURE brand globally.

We find that applicant's idealistic hopes for forming a futuristic company based on his FUTURE mark,⁵ as reflected by the above-quoted excerpts from his testimony and website, do not suffice as the requisite Section 1(b) specific bona fide intent to use the mark in commerce in connection with the goods in Classes 9, 16 and 28 identified in the application. Rather, we find that applicant, in filing the application, was merely attempting to reserve a general right in the mark for potential

⁵ In addition to his stated hopes for developing his FUTURE mark in the context of a corporation or company, applicant has described his intentions even more broadly in his *pro se* brief, which includes the following excerpts:

The intent of the applicant is to help people globally to have a place to recognize their ideas and place these products and services into the marketplace in a setting such as encompassed in or as a country.

People's ideas are the product with the concept of FUTURE being similar to a country.

Applicant request[s] that the global people FUTURE brand rights and ideas be recognized as a country, and request[s] that global FUTURE COUNTRY be saved as it has every right to survive as a country.

use on some undetermined goods at some indefinite time in the future. *See Saul Zaentz Co. v. Bumb*, 95 USPQ2d 1723, 1728 (TTAB 2010) (applicant's statements that he filed the application for "the opportunity to create something in the future" and to "cover the trademark in lieu of something growing" show intent merely to reserve a right in the mark). *See also Swatch AG (Swatch SA) (Swatch Ltd.) v. M. Z. Berger & Co.*, 108 USPQ2d 1463, 1477 (TTAB 2013) (finding that applicant's intent at the time it filed its application was merely to reserve a right in a mark "in case it made the firm decision to begin developing an associated product at some future time").

Next, the legislative history pertaining to Section 1(b) supports our finding of no bona fide intent in this case.⁶ The TLRA legislative history identifies several examples of

⁶ We deem it appropriate in this case to consult the TLRA's legislative history in our analysis and application of the "bona fide intent" requirement set out in Section 1(b). We have expressly done so in many of our prior Section 1(b) cases. *See, e.g., Swatch*, 108 USPQ2d at 1477 & n.91; *L'Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1443 (TTAB 2012); *Research In Motion v. NBOR Corp.*, 92 USPQ2d at 1931; *Lane Ltd. v. Jackson Int'l Trading Co.*; 33 USPQ2d at 1355; and *Commodore Electronics Ltd. v. CBM Kabushiki Kaisha*, 26 USPQ2d at 1506-07. Also, quoting from the TLRA legislative history itself (at S. Rep. No. 100-515, 100th Cong. 2d Sess. at 24 (1988)), the Board noted in *Lane Ltd.* that "Congress, in drafting the TLRA, purposely omitted a statutory definition of the term 'bona fide' as used in the phrase 'bona fide intention,' in the interest of preserving 'the flexibility which is vital to the proper operation of the trademark registration system.'" *Lane Ltd.*, 33 USPQ2d at 1355. *Cf. Central Garden & Pet Co. v. Doskocil Mfg. Co., Inc.*, 108 USPQ2d 1134, 1148-49 (TTAB 2013) (finding that resort to the legislative history of Trademark Act § 10(a)(1) involving assignment of intent-to-use applications is unnecessary and improper given the clear language of the statutory section itself).

objective circumstances which, if proven, "may cast doubt on the bona fide nature of the intent or even disprove it entirely."

Lane Ltd., 33 USPQ2d at 1355, quoting from S. Rep. No. 100-515, 100th Cong. 2d Sess., at 23-24 (1988).

Specifically included among the legislative history's examples of an objective circumstance which may cast doubt on or disprove bona fide intent is "an excessive number of intent-to-use applications in relation to the number of products the applicant is likely to introduce under the applied-for marks during the pendency of the applications." *Id.* We find that this example from the TLRA legislative history is present in this case involving applicant's twenty-two-class application. Initially, we note that in this case we have only one intent-to-use application, not multiple applications. However, for purposes of the TLRA legislative history regarding an excessive number of intent-to-use applications being an objective circumstance evidencing lack of bona fide intent, we find that applicant's single intent-to-use application, ultimately comprising twenty-two classes, effectively is the equivalent of twenty-two separate intent-to-use applications, one for each class. As the Board has previously explained:

An applicant for a trademark registration may file for registration in more than one class by filing a single application. See Trademark Rule 2.86. ... Thus, a multiple-class application can be viewed as a series

of applications for registration of a mark in connection with goods or services in each class, combined into one application. As a general matter, the filer of such an application is in the same position it would be had it filed several single-class applications instead.

G & W Laboratories Inc. v. GW Pharma Ltd., 89 USPQ2d 1571, 1573-74 (TTAB 2009). See also *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 28 (CCPA 1976); Trademark Manual of Examining Procedure ("TMEP"), § 1403.01 (October 2013).

Our finding that the above-quoted TLRA legislative history supports a finding of no bona fide intent in this case is based on the sheer number and diverse scope of the goods identified in applicant's twenty-two-class application as a whole,⁷ and especially the exceedingly broad scope of the goods in the opposed Classes 9, 16 and 28. For example, each class includes

⁷ Applicant's identification of goods in his original application included a voluminous number and variety of goods. Numerous amendments were required and entered throughout prosecution of the application to properly identify and classify the goods; as indicated above, the application was filed over thirteen years ago. These amendments culminated in the present identification of goods, which comprises hundreds of different goods in twenty-two classes. In addition to the diversity of the goods in the three opposed classes, a representative sample of goods in the other nineteen classes in the involved application include the following: biochemicals used in genetic engineering; food preservative compositions (Class 1); fuel for motor vehicles, namely, gasoline, diesel and ethanol (Class 4); a wide variety of dietary and food supplements and medicinal products in Class 5; washing machines for clothes, kitchen mixers, riding lawn mowers (Class 7); and hot water heaters, snow making machines (Class 11).

a wide range of products: computers and tire pressure gauges (Class 9); Christmas cards and paint brushes (Class 16); and golf clubs and jump ropes (Class 28). We find it to be highly unlikely that applicant would be able to introduce his identified goods during the pendency of this intent-to-use application.

In his brief applicant argues that he

has and always have [sic] had and [sic] continuing ongoing bona fide intent and has and is in the ongoing process of finding business partners, investors, licensees, legal counsel and necessary expertise. A very broad list of goods/services should not, in itself, be taken to imply any lack of bona fide intent to use over the whole of that specification. Just because genuine business plans may be very broad does not mean the applicant does not have a good faith intention.
(Brief, p. 3).

However, the above-quoted TLRA legislative history provides otherwise, and we find that it specifically supports a finding of no bona fide intent in this case.⁸

⁸ Cf. *Salacuse v. Ginger Spirits Inc.*, 44 USPQ2d 1415 (TTAB 1997). *Salacuse* was a Section 2(d) cancellation case in which the petitioner's priority claim was based solely on his constructive use date arising from a prior-filed but still-pending intent-to-use application. The Board denied petitioner's summary judgment motion as to priority, finding that if respondent were able to prove at trial its contention that petitioner had also filed multiple other intent-to-use applications to register the mark for numerous goods ranging from food and beverages to luggage to furniture to motor vehicles, that proof would support a finding, based on the TLRA legislative history, that the intent-to-use application upon which petitioner was solely relying for Section 2(d) priority purposes was void *ab initio* due to lack of bona fide intent.

Next with respect to the issue of bona fide intent, we find that there is no evidence in the record which would establish that applicant currently has or has ever had the capacity to provide any of the numerous goods in Classes 9, 16 and 28 identified in the application.

As background, applicant testified that he is an unemployed/self-employed security guard, with disability income at \$700 per month, who lives in the basement of his parents' home. (Anderson dep., pp. 8-9, 17). Applicant describes himself as "poor, very poor, with no money to work with." (Anderson dep., pp. 17, 19). Applicant "never had any money in my lifetime to start any business," indicating that "people's ideas are the product." (Anderson dep., pp. 11, 14, 15). Applicant contends that when he filed the application "I saw the vision in my mind where people can work together around the world in the future." (Anderson dep., p. 9). According to applicant, "my mindset was to help people throughout the world." (Anderson dep., p. 17). When asked about his basic goal to keep the mark FUTURE free for use by all people, applicant stated:

I really - I really don't know. It's so complicated. In my mind, I see a country like the United States and globally people can license the brand FUTURE. They can market it. The government can use it to draw people together. I see the FUTURE brand can help people throughout the world. What you guys are doing - you're trying to control the FUTURE so no one else in the

world can use it. I haven't filed one opposition against anyone who has destroyed FUTURE.

(Anderson dep., p. 27).

As is apparent from the testimony, applicant himself never had the financial resources to manufacture the goods identified in Classes 9, 16 and 28. According to applicant, "the people did have the resources and the country and the government had the resources. I never had any money in my lifetime. I was held back or attacked or worked minimum wage paying jobs and stuff. I never had the opportunity." (Anderson dep., p. 15). "I have no money to work with." (Anderson dep., p. 19). Although applicant states that he obtained a business loan, he declined to specify the amount. (Anderson dep., pp. 10-11).

Based on the record we find that applicant lacked the capacity to manufacture the goods and this finding supports our conclusion of no bona fide intent. See *L'Oreal S.A. v. Marcon*, 102 USPQ2d at 1443 (finding that the applicant's "lack of capacity or experience needed to manufacture or otherwise offer his identified goods" supports a finding of no bona fide intent).

Applicant contends, however, that he has engaged in numerous efforts to license his mark: "I have [a budget] in my mind; I have a business plan, an executive summary." (Anderson dep., p. 18). Applicant contends that he has written letters to

advertising agencies, that he has made "hundreds of phone calls," and that he has over 300 domain names pending with Network Solutions. (Anderson dep., pp. 19-20). Applicant also states that he has placed advertisements in newspapers, but "no one would touch me." (Anderson dep., p. 20). When asked if he had ever had face-to-face meetings with any advertising agencies or product design firms, his answers were ambiguous, or "I just don't remember." (Anderson dep., pp. 20-21).

The testimony and evidence regarding applicant's efforts and activities with respect to his mark FUTURE are too non-specific, both as to the actual nature and results of the efforts and activities and as to their timing relative to the application filing date, to provide any significant support of a finding that applicant possessed the requisite bona fide intent to use the mark in connection with the identified goods in Classes 9, 16 and 28. We agree with opposer's assessment that "any business model was nonsensical and unrecognizable in any objective business sense." (Brief, p. 10).

What little evidence of record there is pertaining to applicant's bona fide intent hardly qualifies as substantial evidence to support such intent. Of record are several letters to and from applicant regarding applicant's FUTURE mark. These include what appear to be unsolicited letters from applicant to President Obama, Janet Yellen (Federal Reserve Board chair), the

Council of the European Union, the President of the United Arab Emirates, Nike, Inc., Ford Motor Company and Cathay Pacific Airways; applicant received some responses, all in the nature of "no thanks," but wishing applicant well.

These letters provide little or no support for applicant's claim of bona fide intent. None of them refers specifically to any of the identified goods in Classes 9, 12 or 28 (or any other goods) at issue in this case, but rather only to applicant's general ideas and hopes for his FUTURE project.

In short, we find that the documentary evidence of record fails to provide support for applicant's claim that he had a bona fide intent with respect to the goods in Classes 9, 16 and 28 when he filed his application. In fact, the lack of documentary evidence supports a finding of no bona fide intent. *See Saul Zaentz Co. v. Bumb*, 95 USPQ2d at 1729.

Conclusion

We find that the testimony and documentary evidence of record falls far short of establishing applicant's bona fide intent with respect to his goods in Classes 9, 16 and 28 when he filed his application. As noted above, "... the determination of whether an applicant has a bona fide intention to use the mark in commerce is to be a fair, objective determination based on all the circumstances." *Lane Ltd. v. Jackson Int'l Trading Co.*, 33 USPQ2d at 1355. We carefully have considered all of the

evidence of record pertaining to the lack of a bona fide intent claim, as well as all of the parties' arguments with respect thereto (including any evidence and arguments not specifically discussed in this opinion), and we conclude that opposer has carried its burden of establishing that applicant, when he filed the involved application, lacked the requisite bona fide intent to use the mark on the goods listed in Classes 9, 16 and 28.⁹

In view of our decision on the no bona fide intent claim, we need not reach the fraud claim.

Decision: The opposition against the application in Classes 9, 16 and 28 on the ground of no bona fide intent is sustained, and registration to applicant in those classes is refused. The application will proceed in the remaining classes.

⁹ Applicant at one point suggests that the opposition be sustained against all of the classes of goods in the involved application. (Brief, p. 11). We are constrained, however, to grant relief only as to what opposer requested in the notice of opposition; the opposition was filed against the application in the three identified classes. However, applicant has the option of filing with the trademark examining attorney an express abandonment of the other classes of goods in the involved application. Trademark Rule 2.68.