

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

The Red Luna Company (KO))	
)	
Opposer,)	Opposition No. 91212914
)	Serial No. 85/672788
vs.)	Mark:
)	DOKE
Oasis Intertrade Limited)	
)	
Applicant.)	

**APPLICANT’S MEMORANDUM IN SUPPORT OF ITS
MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**

Applicant, Oasis Intertrade Limited, respectfully submits this memorandum in support of its motion to dismiss for failure to state a claim, pursuant to Rule 12(b) of the Federal Rules of Procedure and TBMP § 503.

INTRODUCTION

Applicant, Oasis Intertrade Limited, filed an application to register the mark DOKE, Serial No. 85/672788 on July 10, 2012 for a variety of products in including those in Classes 29, 30, 31, 32, and 33.

The Application Serial No. 85/672788 was published on June 11, 2013. On June 11, 2013, Alberto Soler filed a 90 Day Request for Extension of Time to Oppose for Good Cause; Alberto Soler was granted until October 9, 2013 to file an opposition. On October 9, 2013, The Red Luna Company (KO) (hereinafter “Red Luna”) filed an opposition against Serial Number 85/672788. The opposition claims ownership of an application Red Luna does not own; moreover, Red Luna did not obtain an extension of

time and therefore was statutorily barred from bringing the opposition. Lastly, Opposer's Notice of Opposition is insufficient to state a claim upon which relief can be granted and Opposer's Notice of Opposition should be dismissed.

DISCUSSION

"A motion to dismiss for failure to state a claim upon which relief may be granted is a test solely of the legal sufficiency of the complaint." TBMP § 503.02. A pleading must allege such facts as would, if proved, establish that (1) the plaintiff has standing to maintain the proceeding, and (2) a valid ground exists for denying the registration sought. See id.

The facts alleged by Opposer in its Complaint are insufficient to create standing in that: (1) Opposer did not obtain an extension of time to oppose this application; (2) Opposer does not own the trademark asserted in the Notice of Opposition (Serial Number 85/741,161); (3) even if Opposer can prove it owns Serial Number 85/741,161, its intent to use application was filed September 28, 2012 --- after Applicant's Serial Number 85/672788 was filed; and (4) Opposer has not alleged how it may be damaged by the registration of the Applicant's mark as required under the Section 13 of the Lanham Act, 15 USC § 1063, the Federal Rules of Procedure, Rule 12(b) and Trademark Rules of Practice § 2.104.

Moreover, regardless of whether Opposer has standing and would be damaged by registration of Applicant's mark (which it has not alleged and cannot allege based on the facts on record), Opposer is required to state a valid ground on which to deny the registration. In this case, Opposer's Opposition is completely incomprehensible and is dominated largely by completely irrelevant facts related to issues Opposer has with a

third party, namely The Coca-Cola Company. Moreover, Opposer makes numerous allegations which are not, and cannot be substantiated. Examples of the in comprehensible and unsubstantiated statements and allegations include:


1. “The word OK is the most common and popular word on the plant.”
2. “Knowingly trafficking in trademark names through first-Terra then Argo to finally here to Oasis with mark names not the one here and letting go some on the way to let those left over to be now related to the one here called *Doke* filed by Oasis-for the willful intent to deceive the USPTO and all others from knowing its illegal scheme to further monopolize all its trade through also the retail trade.”
3. “Knowingly manipulated the USPTO into approving and providing a publication date although there already existed an exact mark name class/goods with a publication date – for the willful intent to deceive the USPTO but, not the victim here, to overcome the spill-over effect of its fraudulent filed 1(b) application that open the door to KO here being approved for publication first not having a earlier filed date – but then taken away after alerting the USPTO of fraud and saving them from embarrassment for approval of both the same and never even getting a thank you man”.

These are just a few examples; however, the entire Notice of Opposition reads in a similar fashion as the sentences above.

WHEREFORE, for the reasons stated above, Opposer’s Notice of Opposition should be dismissed.

Respectfully submitted,

Dated: October 29, 2013

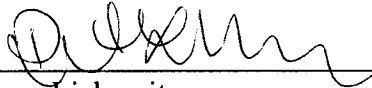


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CERTIFICATE OF SERVICE

The undersigned, attorney for Applicant, hereby certifies that he served, by e-mail, a copy of the foregoing Motion to Dismiss for Failure to State a Claim and Memorandum in Support of its Motion to Dismiss upon Opposer at dokecola@live.com and redlunalaw@att.net, this 29th day of October, 2013.



Rebecca Liebowitz