

This Opinion is Not a  
Precedent of the TTAB

Mailed: September 30, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*Opes, Inc.*

*v.*

*Aladin Communications Inc.*

—  
Opposition No. 91213184  
—

Chanmin Park of Law Office of Lee & Park,  
for Opes, Inc.

Matthew L. Seror of Buchalter Nemer,  
for Aladin Communications, Inc.

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Before Quinn, Zervas and Mermelstein,  
Administrative Trademark Judges.

Opinion by Zervas, Administrative Trademark Judge:

Aladin Communications Inc. (“Applicant”) is the owner of application Serial No. 85732630, filed on September 19, 2012, under Section 1(b) of the Trademark Act,



15 U.S.C. § 1051(b), for the mark  for “auctioneering services; providing consumer product information via the internet or other

communications networks; retail and wholesale online and offline bookstore services; computerized on-line ordering services featuring a wide variety of consumer goods; providing a searchable database in the field of business information available via a global computer network; providing a searchable on-line advertising guide featuring the goods and services of others” in International Class 35. A description of the mark in the record states, “The mark consists of a lantern shaded with the colors gold, dark blue, pink, gold and the handle being dark blue; to the right of the lantern is the word ‘ALADDIN’ written in dark blue.” The colors gold, dark blue, and pink are claimed as a feature of the mark.

In its notice of opposition,<sup>1</sup> Opes, Inc. (“Opposer”) alleges:

Opposer is a leader in online and offline, retail and wholesale bookstores selling books, audio CD’s and DVD’s (“Bookstore Services,” hereinafter), since at least as early as 1999, throughout the United States under the trademark Aladdin, **알라딘** (Korean transliteration of “Aladdin”), and a design mark that resembles a lamp (“Aladdin Marks” hereinafter). Since at least as early as 1999, Opposer has been using Aladdin Marks in connection with Bookstore Services, and Opposer continues such use of the mark. Opposer has spent a considerable amount of money, time and energy in rendering, advertising,

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<sup>1</sup> 1 TTABVUE.

Citations in this opinion will be to the TTABVUE docket entry number and the electronic page number where the document or testimony appears. Because the Board primarily uses TTABVUE in reviewing evidence, the Board prefers that citations to non-confidential parts of the record include the TTABVUE docket entry number and the TTABVUE page number. For material or testimony that has been designated confidential and which does not appear on TTABVUE, the TTABVUE docket entry number where such material or testimony is located should be included in any citation. See *Turdin v. Trilobite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014).

marketing and promoting Bookstore Services under its Aladdin Marks ... .”<sup>2</sup>

Opposer did not provide a depiction of the “design mark that resembles a lamp” in the notice of opposition. However, in the online form accompanying the notice of opposition filed through ESTTA, the Board’s electronic filing system, Opposer listed the following mark for “online and offline, retail and wholesale bookstores selling books, audio CD[ ]s and DVD[ ]s”:



We consider Opposer to have asserted this combination word and design mark, identified in the online form. *See Hunt Control Systems Inc. v. Koninklijke Philips Electronics N.V.*, 98 USPQ2d 1558, 1561 (TTAB 2011) (“[The ESTTA] form, along with any attached supplementary elaboration of the basis for the opposition, serves as the complaint in the opposition proceeding”); *Schott AG v. Scott*, 88 USPQ2d 1862, 1863 n.3 (TTAB 2008) (“[T]he ESTTA generated filing form ... is considered part of the plaintiff’s initial pleading”). With regard to the “Korean word which transliterates to Aladdin” mentioned in the ESTTA cover sheet as another of Opposer’s marks, we

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<sup>2</sup> ¶ 1, 1 TTABVUE.

construe that mark as the Korean transliteration identified in Paragraph 6 of the notice of opposition, depicted above.<sup>3</sup>

In addition to alleging priority, Opposer alleges a likelihood of confusion among the Aladdin Marks and Applicant's applied-for mark pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).<sup>4</sup>

Applicant denied Opposer's salient allegations in its answer to the notice of opposition, and the parties have fully briefed the case.

### *Evidentiary Issues*

Opposer, during its initial trial period, filed three declarations, with exhibits. Trademark Rule 2.123, 37 CFR § 2.123, provides that testimony of a witness may be taken by deposition upon oral examination or by deposition upon written questions. By written agreement of the parties, however, the testimony of any witness or witnesses of any party may be submitted in the form of an affidavit or declaration by such witness or witnesses. See TRADEMARK BOARD MANUAL OF PROCEDURE § 703.01(b). The Board has not been informed of any written agreement between the

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<sup>3</sup> Opposer also asserted on the ESTTA form its application Serial No. 85786966 for the mark

**알라딘BOOKS** for retail store services featuring “books text-books, used books; Wholesale store services featuring books, text-books, used books” in International Class 35. Opposer filed this application on November 26, 2012, over a month after Applicant filed its application. Because of its later filing date, Opposer's application Serial No. 85786966 is not a valid basis for opposing the registration of Applicant's mark.

<sup>4</sup> In Opposer's reply brief, Opposer raises and discusses, for the first time, a claim of no bona fide intent to use the mark in commerce. Because this claim was not pleaded, was not tried by the implied consent of the parties, and was not raised in Opposer's main brief, we give this claim no further consideration. See TRADEMARK BOARD MANUAL OF PROCEDURE (“TBMP”) § 314 (2016) and cases cited therein.

parties allowing testimony through a declaration. Applicant did not object to Opposer's submission of testimony by declaration, and Applicant questioned two of the witnesses who submitted declarations during its testimony period. Applicant therefore has waived any objection it had to the submission of testimony by declaration by Opposer, and we have considered the three declarations submitted by Opposer during its initial trial period. *See Hilson Research Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423, 1425 n.8 (TTAB 1993) (objection waived where although there was no such agreement, plaintiff did not object to declarations with exhibits submitted by defendant and moreover treated the evidence as if properly of record).

In addition, it appears that Opposer has maintained in its main brief its objection to certain business records submitted during the testimonial deposition of Mr. Myeng Gug Song, general manager of Applicant, and former technical officer and chief technical officer of Opposer from August 17, 1999 to October 31, 2010.<sup>5</sup> Without specifically identifying what it is referring to, Opposer states at p. 2 of its main brief:

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<sup>5</sup> An objection seasonably raised at trial may be waived if a party fails to preserve an objection in its brief on the case, or in an appendix to the brief on the case or in a separate statement of objections filed with the brief on the case. See, e.g., *7-Eleven, Inc. v. Wechsler*, 83 USPQ2d 1715, 1718 n.25 (TTAB 2007) (objection to deposition exhibit waived because not renewed in trial brief); *Wet Seal Inc. v. FD Management Inc.*, 82 USPQ2d 1629, 1632 (TTAB 2007) (objection to testimony waived when not renewed in brief); *Duramax Marine LLC v. R.W. Fernstrum & Co.*, 80 USPQ2d 1780, 1785 (TTAB 2006) (objection that witness was not a trademark expert not maintained in brief and thus waived); *First Niagara Insurance Brokers Inc. v. First Niagara Financial Group Inc.*, 77 USPQ2d 1334, 1340 n.14 (TTAB 2005) (objection made in deposition but not renewed in brief deemed waived), rev'd on other grounds, 476 F.3d867, 81 USPQ2d 1375 (Fed. Cir. 2007); *Hard Rock Café International (USA) Inc. v. Elsea*, 56 USPQ2d1504, 1507 n.5 (TTAB 2000) (objection to exhibit raised during deposition but not maintained in brief deemed waived); *Reflange Inc. v. R-Con International*, 17 USPQ2d 1125, 1126 n.4 (TTAB 1990) (objections to testimony and exhibits made during

As a try to prove its use for common law trademark, Applicant submitted sales records from its business records during 1999 and 2012. The sales records are far short in proving elements of use in commerce, at least in that the records were submitted though an [sic] witness' testimonial deposition, who has not personal knowledge for the records, and the Applicant's witness' testimonies mostly includes mere conclusions.<sup>6</sup>

We give Opposer the benefit of any doubt as to whether it is preserving an objection and construe the quoted paragraph as repeating Opposer's objection to Exhibit T Mr. Song's testimonial deposition. Exhibit T is a computer printout of Applicant's sales to U.S. purchasers made through Applicant's Korean website from 1999 until 2012. The printout was created pursuant to Mr. Song's request of Applicant's technical staff in Korea and included the addresses of such purchasers and shipping information for their orders. Applicant introduced the exhibit on August 20, 2015 during its direct examination of Mr. Song. Opposer's attorney immediately objected to the introduction of Exhibit T, identifying his objection as "undue prejudice. Unfair surprise. This document was not submitted during the discovery period."<sup>7</sup> Opposer's attorney cross-examined Mr. Song at length about the document during the continuation of Mr. Song's testimony deposition, on October 23, 2015, two months after Applicant introduced Exhibit T.<sup>8</sup>

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depositions deemed waived where neither party raised any objection to specific evidence in its brief). See also TBMP § 707.04.

<sup>6</sup> 29 TTABVUE 5.

<sup>7</sup> Song Test. at 42, 25 TTABVUE 44. Testimony depositions are cited as "Test." herein.

<sup>8</sup> Mr. Song's testimony deposition was continued pursuant to the Board's October 8, 2015 order, when the Board granted Applicant's motion to extend Applicant's testimony period. Evidently, Opposer and Applicant attempted to reach a stipulation addressing the

Opposer has not identified the document request to which Exhibit T is responsive and we will not hunt through the record to locate that discovery request. In addition, Applicant's attorney took the opportunity to question Mr. Song about this document, and in fact continued his questioning approximately two months after Applicant introduced Exhibit T into evidence, leaving him ample time to prepare for his questioning. We therefore overrule Opposer's objection to Exhibit T on the ground of "undue prejudice. Unfair surprise. ... not submitted during the discovery period," and consider it for whatever probative value it may have.

We consider next whether Applicant has properly authenticated Exhibit T and established that Exhibit T is a business record pursuant to Fed. R. Evid. 803(6), particularly because Mr. Song testified that his employment with Applicant began in January 2013.<sup>9</sup> Clearly, he had no personal knowledge of the sales reflected in Exhibit T in 1999. Mr. Song testified that he gave the direction to create Exhibit T from the records of aladin.co.kr; that the server on which the data forming Exhibit T resides contains data from 1999; that the customer order records were created when the customers inputted their information into the aladin.co.kr website when ordering their books; and that the sales records are kept in the ordinary course of Applicant's business.<sup>10</sup> We find that Mr. Song's testimony authenticates Exhibit T as having been compiled from Applicant's company records and that it qualifies as a business record

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admissibility of Exhibit T. They were unable to agree on its admissibility, necessitating an extension of Applicant's testimony period.

<sup>9</sup> Song Test. at 121, 26 TTABVUE 35.

<sup>10</sup> Song Test. at 41-42, 67, 71, 96-100; 25 TTABVUE 43-44, 69, 73; 26 TTABVUE 10-14.

pursuant to Fed. R. Evid. 803(6). *See United States v. Flom*, 558 F.2d 1179 (5th Cir. 1977) (official familiar with record keeping system laid foundation; it is not necessary that the person who kept the record or even had supervision over its preparation testify).

In addition to Exhibit T, we construe Opposer's quoted statement from its brief as repeating an objection to Exhibit U to Mr. Song's testimony deposition. Exhibit U, introduced on the October 23, 2015 portion of Mr. Song's testimony deposition, comprises records of sales made through the aladin.co.kr website.<sup>11</sup> The Board, on October 8, 2015, ordered the continuation of Mr. Song's testimony deposition, but only insofar as to Exhibit T.<sup>12</sup> Thus, Exhibit U exceeds the terms of the Board's October 8, 2015 order and is excluded from evidence.<sup>13</sup> Opposer's objection to Exhibit U is sustained, albeit on a different ground.

Opposer also states (but in its reply brief), that it objected to Exhibits Q, R and S to Mr. Song's testimony deposition on the grounds of undue prejudice and unfair surprise because they were not produced during the discovery period. Inasmuch as Opposer preserved its objection only to sales records in its main brief, and these three exhibits are not sales records, Opposer has waived any objection to these exhibits.

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<sup>11</sup> Song Test. at 115, 26 TTABVUE 29.

<sup>12</sup> The Board's October 8, 2015 order stated, Applicant's "motion to extend its testimony period is hereby GRANTED for the sole purpose of concluding Mr. Song's deposition as it relates to Exhibit T. Opposer's rebuttal period has also been reopened for this limited purpose." (emphasis in original.) 23 TTABVUE 3.

<sup>13</sup> Because Exhibit T concerns sales made in the United States, Exhibit U merely is further evidence of what is already in evidence; it is cumulative of Exhibit T. Thus, our decision on the merits in this case would not be any different had we further considered Exhibit U.



*The Record*

In addition to the pleadings and Applicant's opposed application which is automatically of record, *see* Trademark Rule 2.122(b), the evidence of record consists of:

For Opposer:

- Declaration of Hyuk Ho Kwon, a director of Opposer, and exhibits;<sup>14</sup>
- Declaration of Kun Soo Chung, President of Opposer, and exhibits;<sup>15</sup>
- Declaration of Chanmin Park, Opposer's attorney of record, and exhibits;<sup>16</sup>
- Opposer's rebuttal Notice of Reliance which includes excerpts from the discovery deposition of Mr. Chung;<sup>17</sup> and
- Opposer's rebuttal Notice of Reliance which includes copies of publications, written discovery and official records of the USPTO.<sup>18</sup>

For Applicant:

- Applicant's Notice of Reliance which includes excerpts from the discovery deposition of Mr. Chung, and Opposer's Supplemental Verified Responses to Applicant's First Set of Interrogatories.<sup>19</sup>

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<sup>14</sup> 14 TTABVUE.

<sup>15</sup> 15 TTABVUE.

<sup>16</sup> 16 TTABVUE.

<sup>17</sup> 17 TTABVUE.

<sup>18</sup> 22 TTABVUE.

<sup>19</sup> 17 TTABVUE.

- Applicant’s cross-examination of Mr. Kwon (by deposition), and exhibits;<sup>20</sup>
- Applicant’s cross-examination of Mr. Chung (by deposition), and exhibits;<sup>21</sup>
- Testimony deposition of Yoo Sik Cho, founder and CEO of Applicant, and exhibits, including Mr. Cho’s declaration submitted previously with Applicant’s summary judgment motion);<sup>22</sup> and
- Testimony deposition of Mr. Song, and exhibits.<sup>23</sup>

### *Standing*

Standing is a threshold issue that must be proven by a plaintiff in every *inter partes* case. To establish standing in an opposition or cancellation proceeding, a plaintiff must show “both a ‘real interest’ in the proceedings as well as a ‘reasonable basis’ for its belief of damage.” *Empresa Cubana Del Tabaco v. Gen. Cigar Co.*, 753 F.3d 1270, 111 USPQ2d 1058, 1062 (Fed. Cir. 2014) (quoting *ShutEmDown Sports, Inc., v. Lacy*, 102 USPQ2d 1036, 1041 (TTAB 2012)); *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1025 (Fed. Cir. 1999); *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 189 (CCPA 1982). The Court of Appeals for the Federal Circuit has enunciated a liberal threshold for determining standing in Board proceedings. *Ritchie*, 50 USPQ2d at 1030. Mr. Chung stated at Paragraph 2 of his declaration that Opposer has been using the “Aladdin Marks” on the website

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<sup>20</sup> 27 TTABVUE.

<sup>21</sup> 28 TTABVUE.

<sup>22</sup> 24 TTABVUE.

<sup>23</sup> 25 and 26 TTABVUE.

www.aladdin.com since December, 1999.<sup>24</sup> This is sufficient to demonstrate that Opposer has a real interest in this proceeding and, therefore, has standing.<sup>25</sup> Opposer's standing is also established by the reference by the Examining Attorney of the opposed application as a possible basis for refusal in connection with an application owned by Opposer, namely, application Serial Number 85786966.<sup>26</sup> See *Weatherford/Lamb Inc. v. C&J Energy Services Inc.*, 96 USPQ2d 1834, 1837 (TTAB 2010) (Office action suspending plaintiff's pending application pending possible refusal based on alleged likelihood of confusion with defendant's registration made of record); TBMP § 309.03(b).

#### *Priority*

To establish priority, an opposer must show proprietary rights in a mark that produce a likelihood of confusion. *Herbko International, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1378 (Fed. Cir. 2002). See also, *Otto Roth & Co. v. Universal Foods Corp.*, 640 F.2d 1317, 209 USPQ 40, 43 (CCPA 1981). These proprietary rights may arise from prior trademark use. *Id.*

In November 1998, Applicant, a South Korean corporation, began development of an online bookstore selling Korean language books.<sup>27</sup> Applicant launched its online

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<sup>24</sup> 15 TTABVUE 3.

<sup>25</sup> In order for a plaintiff to prevail on a claim of likelihood of confusion based on its ownership of common law rights in a mark, the mark must be distinctive, inherently or otherwise, and plaintiff must show priority of use. See *Otto Roth & Co. v. Universal Foods Corp.*, 640 F.2d 1317, 209 USPQ 40 (CCPA 1981). There is no argument that the Aladdin Marks are not distinctive, and we know of no reason why ALADDIN would not be distinctive for the involved services.

<sup>26</sup> Exh. 15 Park Decl., 16 TTABVUE 402.

<sup>27</sup> Cho Test. at 8-10, 24 TTABVUE 9-11.

bookstore in Korea in July 1999 and used the URL [www.aladin.co.kr](http://www.aladin.co.kr).<sup>28</sup> Applicant's website featured the term ALADDIN in English.<sup>29</sup> Since that time, Applicant has continuously offered for sale and sold its books through its website.<sup>30</sup> The [www.aladin.co.kr](http://www.aladin.co.kr) website was and is operated in Korea, was and is in Korean (but includes the English term Aladdin) and accepted and accepts only South Korean Won as payment.<sup>31</sup> In addition, beginning in early 1999, articles in Korean newspapers about Applicant and its website appeared in Korean newspapers such as JoongAng Daily and Chosun Daily, which are read and circulated in the United States.<sup>32</sup>

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<sup>28</sup> Id.

<sup>29</sup> Mr. Cho testified at p. 34 of his testimony deposition, 24 TTABVUE 35:

Q. And the English word Aladin has appeared on this site from the launch back in July of 1999 to the present; is that right?

A. Yes.

<sup>30</sup> See also Song Test. 33, 46-47, 25 TTABVUE 35, 48-50; Exh. T, 24 TTABVUE 127.

<sup>31</sup> Cho Test. 18, 24 TTABVUE 19.

<sup>32</sup> Cho Test. 14-15, 24 TTABVUE 15-16, stating:

Q. In February of 1999, JoonAng Daily, one of the major Korean newspapers had an article saying that Aladin was in preparation to launch and it was like the Korean Amazon. And it was not just a short article, but the reporter interviewed me and it was long article. In July 1999, Chosun Daily, another Korean newspaper published similar article and various TV and radio programs reported about Aladin's launching.

Q. These newspapers that you're describing, are those newspapers, do you know if they are available in the United States?

A. Yes, these are accessible in the United States through the Internet and also for the Korean Americans. They were being distributed in the United States and those papers were Chosun Daily and JoonAng Daily.

Applicant's website was, of course, accessible in the United States in 1999. From July 1999 to December 1999, Applicant made sixteen sales in the United States and shipped products to California, South Carolina, New Jersey, Minnesota, Texas, Illinois, Kentucky and Tennessee, among other states.<sup>33</sup> Sales by Applicant to United States consumers have continued through the present.<sup>34</sup>

On December 3, 1999, however, Applicant entered into a first distribution agreement with Opposer.<sup>35</sup> The first distribution agreement was intended to increase

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Q. These are daily papers distributed to the United States to Korean Americans?

A. Yes.

<sup>33</sup> Cho Test. at 13, 24 TTABVUE 14; Cho Decl. ¶¶ 6 and 7, 24 TTABVUE 83-84; and Exhs. A and B to Mr. Cho's declaration, comprising what Mr. Cho identifies as business records of Applicant showing orders placed from customers in the United States prior to December 1999. 24 TTABVUE 89-106.

<sup>34</sup> Mr. Cho testified at p. 29 of his testimony deposition:

Q. Turning back to sales in the United States through the aladin.co.kr, have sales through that Web site to the United States been continuous from the July 1999 launch of that site through the present time?

A. Yes.

Q. Do you have any estimate in terms of the number of sales that occur on an annual basis through the aladin.co.kr website to the United States?

A. In a low year about 260 sales, and in a high year about 1,110 sales, so on average about 600 sales per year.

Q. Was the sales to United States consumers; is that right?

A. Yes.

24 TTABVUE 30. See also Song Test. pp. 95-116, 26 TTABVUE 9-30; Exh. T, 24 TTABVUE 127.

<sup>35</sup> Cho Test. 15-17, 24 TTABVUE 16-18.

Applicant's presence in the United States by creating a new website (www.aladinus.com), through which Applicant's books would be offered for sale and sold to more U.S.-based customers.<sup>36</sup> The agreement provided that "Aladdin, aiming at Korea, and Ores, aiming at North America region through Aladdin US, shall do the marketing" and Opposer "shall have exclusive business rights for Online Book Store North America market."<sup>37</sup> The agreement was silent on trademark rights to the Aladdin Mark.

On December 2, 2001, after the first distribution agreement expired, the parties entered into a second distribution agreement.<sup>38</sup> The second distribution agreement was also silent as to trademark rights and as to whether Opposer had any exclusivity, and stated, "[m]atters not mentioned in this agreement shall be decided by mutual discussion so that they could be helpful to enhance the value of both companies," and "[t]his agreement shall supersede the business agreement entered into on December 3, 1999, but the purpose of the initial agreement shall be succeeded."<sup>39</sup>

Thus, Applicant maintains that it has priority based on its use of ALADDIN prior to December 1999, and because Opposer never obtained any rights in the Aladdin Marks, even though it served as Applicant's United States distributor from December 1999 to January 2013 when the parties terminated their relationship.<sup>40</sup>

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<sup>36</sup> Cho Test. 15-17, 24 TTABVUE 16-18.

<sup>37</sup> Park Decl. ¶6, 16 TTABVUE 3; Exh. 5, 16 TTABVUE 25.

<sup>38</sup> Cho Test. 26, 24 TTABVUE 27.

<sup>39</sup> Id.; Park Decl. Exh. 6, 16 TTABVUE 29-30.

<sup>40</sup> Applicant's brief at 11, 30 TTABVUE 15.

Opposer disagrees with Applicant's contention that it has priority and argues, *inter alia*, that:

As a try to prove its use for common law trademark, Applicant submitted sales records from its business records during 1999 and 2012. The sales records are far short in proving elements of use in commerce, at least in that the records were submitted though an [sic] witness' testimonial deposition, who has not personal knowledge for the records, and the Applicant's witness' testimonies mostly includes mere conclusions.<sup>41</sup>

Opposer also argues that in Applicant's response to various interrogatories about first use, Applicant provided a different response, and identified December 1999 as a first use date. Applicant stated as its response:

Applicant's operations began on or before November 23, 1998, and its online bookstore became operational in or about July 1999. Since approximately December 1999, Applicant has been using its marks in the United States and targeting U.S. customers. Opposer's use of the Aladin Marks (as defined), was never its own unilateral use. Rather, such use was done in conjunction with and in furtherance of the joint venture it formed with Applicant and was limited in scope for the purposes of marketing and customer service. As a result, Opposer did not gain common law rights in any marks. Even if such use could be seen as Opposer's use, that use did not occur until after Applicant's use. Newspaper articles and domain registration documents support the foregoing.<sup>42</sup>

Upon careful consideration of the evidence of record, and the arguments of the parties, we find that Applicant used the mark ALADDIN in English (without the lantern design) in the United States in the period between July 1999 and December

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<sup>41</sup> Opposer's brief at 2, 29 TTABVUE 5.

<sup>42</sup> Resp. to Opposer's Int. Nos. 1-5, Exh. 7 Park Decl., 16 TTABVUE 33-44.

1999 in connection with online retail sales of books. The evidence reflects that during this period, once orders for books arrived through the www.aladin.co.kr website, which displayed the ALLADIN mark in English and which Korean-speaking consumers viewed in the United States, Applicant packaged the books and mailed them to the United States from Korea. Sales by Applicant through its website to consumers in the United States have continued through the present.<sup>43</sup> Applicant included the mark ALADDIN in English on boxes, packaging materials, invoices and newsletters.<sup>44</sup>

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<sup>43</sup> Cho Test. 29, 24 TTABVUE 30; Song Test. 95-116, 26 TTABVUE 9-30; Exh. T, 24 TTABVUE 127.

<sup>44</sup> Mr. Cho testified at p. 34 of his testimony deposition:

Q. In addition are there other documents or materials, or anything else where the word “Aladin” appears in connection with your business operations in the United States?

A. It would appear in quite a few things. Only the packaging box and the newsletters and in various media also on the invoice.

Q. Just so I’m clear, we’re talking about invoices and packaging and boxes of things of that nature, you’re referring to the English word “Aladin”; correct?

A. We use both the English Aladin and Korean Aladin.

Q. In all the places you described, both are used?

A. They don’t always go in everything together. Sometimes it’s in English, sometimes in Korean, sometimes they are all alternatively used.

Q. Okay. But you are aware that in some instances the English word “Aladin” is used on packaging invoices sent to the United States to U.S. customers; correct? ... And that has been consistent from the July 1999 time frame to the present?

A. Yes.



Opposer's arguments concerning Applicant's evidence of first use do not persuade us to discount this evidence. The sales records submitted as Exhibits A and B to Mr. Cho's declaration, and the sales records of Exhibit T, demonstrate sales to purchasers residing in the United States. Further, Mr. Cho, who founded, and was involved with, Applicant when Applicant made its first U.S. sales in 1999, is one of Applicant's witnesses; Opposer's challenge regarding the lack of personal knowledge of Applicant's witnesses is without merit. In addition, as discussed above, Mr. Song suitably authenticated Exhibit T and offered testimony establishing Exhibit T as a business record which we may rely on.

In addition, we are not troubled by Applicant's interrogatory response which Opposer maintains is inconsistent with other statements by Applicant. Applicant later responded to Opposer's Interrogatory No. 4 (second set) that:

Applicant first used marks containing the word Aladin (and variations thereof, in English and Korean) in November 1998. Its website launched in July 1999, at which point its sales commenced.<sup>45</sup>

Applicant's answer to Interrogatory No. 4 is consistent with the testimony of two of Applicant's witnesses, as well as Applicant's sales records. Additionally, Opposer, when cross-examining Applicant's witnesses at trial, did not question them regarding the Applicant's interrogatory response.

In view of the foregoing, and because Applicant established that it first used the ALADDIN mark in English in the United States in the period July to December, 1999,

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24 TTABVUE 35.

<sup>45</sup> Park Decl, Exh. 8, 16 TTABVUE 53.

and Opposer has not alleged any earlier use of any trademark to which it may claim rights, we find that Applicant has established priority of use in the United States.

*Likelihood of Confusion*

Because Opposer has not prevailed on the question of priority, we need not reach the question of likelihood of confusion.

**Decision:** Opposer's opposition to Applicant's application Serial No. 85732630 is dismissed.