UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Baxley

Mailed: July 15, 2015

Opposition No. 91217857

Danjaq, LLC

v.

Nancy Tiscareno

Before Bergsman, Mermelstein, and Hightower,
Administrative Trademark Judges.

By the Board:

Nancy Tiscareno ("Applicant"), appearing *pro se*, filed a use-based application under Trademark Act Section 1(a), 15 U.S.C. § 1051(a), to register the mark SUPER BOND GIRL in standard characters for "Entertainment services in the nature of an on-going reality based television program; Entertainment services, namely, an on-going series featuring the lives of bail bondsmen and women, their families, their search for fugitives, their envolment [sic] in their communities, how-to video segments featuring advice about bail bonds, provided through cable television, webcasts, radio broadcast, media, television, and blogs" in International Class 41.[1]

Danjaq, LLC ("Opposer") has opposed registration of Applicant's marks on several grounds, including (1) likelihood of confusion with its previously used marks JAMES BOND, BOND, BOND GIRLS, and BOND GIRL and its previously

[1] Application Serial No. 85783496, filed November 20, 2012, claiming March 1, 2011 as the date of first use anywhere and June 13, 2011 as the date of first use in commerce.

registered marks JAMES BOND 007 in stylized form for goods and services in International Classes 9, 16, 28, and 41[2] and BOND GIRL 007 in typed form for "fragrance, cosmetic, and toiletry products, namely, eau de parfum, body lotion" in International Class 3[3] under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), and (2) nonuse of the mark on "at least" some of the recited services when Applicant filed her application. Applicant, in her answer, admitted that, when she filed her application, she had not made any use of her mark in connection with "Entertainment services in the nature of an on-going reality based television program," but denied that she had not used the mark on "Entertainment services, namely, an on-going series featuring the lives of bail bondsmen and women, their families, their search for fugitives, their envolment [sic] in their communities, how-to segments featuring advice about bail bonds, provided through cable television, webcasts, radio broadcast, media, television and blogs"[4] and otherwise denied the salient allegations of the Notice of Opposition.

This case now comes up for consideration of Opposer's motion (filed March 5, 2015) for summary judgment on its pleaded nonuse claim. The motion is fully briefed.

In support of its motion, Opposer contends that, in view of Applicant's admissions that she did not use her mark in commerce in connection with each of

[2] Registration No. 1737876, issued December 8, 1992, renewed twice.

[3] Registration No. 3673758, issued August 25, 2009.

[4] Applicant further stated that "on September 13, 2011, I posted my first video with advice about bail bonds on YouTube."

the recited services in her use-based application, the application is void *ab initio* as a matter of law. Opposer contends that it has standing based on its pleading of a plausible likelihood of confusion claim; and that, in view of Applicant's admission in her answer that she had not used her mark in connection with an ongoing, reality-based television program, there is no genuine dispute that the application is void *ab initio* as to the reality-based television program as a matter of law. Opposer further contends that, in view of Applicant's admissions that she never provided her on-going series through cable television, webcasts, radio broadcast, and television, i.e., four of the six media through which she claimed in the application to have provided her ongoing series, the application is void *ab initio* as to that ongoing series as well. As an exhibit to that motion, Opposer included a declaration of its attorney Christopher C. Larkin, which makes of record copies of Opposer's requests for admissions and Applicant's responses thereto.

In response, Applicant contends that she first used her mark on September 5, 2011, when she made her first post on her blog http://superbondgirl.blogspot.com/; that her first video was posted on September 13, 2011 on her YouTube channel https://www.youtube.com/user/TheSuperBondGirl; that she appeared on the Anderson Cooper talk show that was broadcast on the Fox network during the first week of February 2012 after Sarah Moga ("Moga"), a producer for the show, who saw Applicant's website and contacted her on January 19, 2012; that, on February 9, 2012, she filed an application to register the mark BUST OUTTA JAIL ASK ME ABOUT BAIL BONDS BAIL BONDS BAIL BONDS

SUPERBONDGIRL.COM and design for "bail bonding" in International Class 36, which matured on September 18, 2012 into Registration No. 4209526;[5] that, on May 19, 2012, she signed a six-month contract with Moga for development of her reality show titled SUPER BOND GIRL; and that, in May 2012, she was featured in *Inland Empire* magazine. Based thereon, Applicant asks that the Board deny Opposer's motion for summary judgment. Applicant's brief in opposition to the motion for summary judgment is supported by her declaration, through which she submits: (1) a receipt from godaddy.com (dated February 23, 2011) for her domain name; (2) an invoice (dated June 27, 2011) from Jay Tec Solutions for website design services rendered; (3) a September 5, 2011 posting on Applicant's blog superbondgirl.blogspot.com; (4) an undated excerpt from the YouTube website which indicates that a video titled IT'S THE SUPER BOND GIRL! was uploaded on September 13, 2011; (5) a series of January 2012 e-mails between Applicant and Moga regarding Applicant's appearance on the Anderson Cooper talk show; (6) a copy of Applicant's Registration No. 4209526; (7) a copy of Applicant's contract with Moga dated May 19, 2012; and (8) a copy of the May 2012 *Inland Empire* article.

In reply, Opposer contends that Applicant ignores the admissions in her answers and discovery responses and that, in any event, the activities recited by Applicant

[5] The mark in Applicant's Registration No. 4209526 is the following:

fail to raise a genuine dispute as to whether Applicant's mark was in use in commerce when she filed her involved application.

Summary judgment is an appropriate method of disposing of cases in which there are no genuine disputes as to any material facts, thus leaving the case to be resolved as a matter of law. *See* Fed. R. Civ. P. 56(c). Opposer, as the movant for summary judgment, has the initial burden of demonstrating the absence of any genuine issue of material fact, and that it is entitled to judgment as a matter of law. *See Celotex Corp. v. Catrett*, 477 U.S. 317 (1987); *Sweats Fashions Inc. v. Pannill Knitting Co. Inc.*, 833 F.2d 1560, 4 USPQ2d 1793 (Fed. Cir. 1987). In considering the propriety of summary judgment, all evidence must be viewed in a light most favorable to the nonmovant, and all justifiable inferences are to be drawn in the nonmovant's favor. The Board may not resolve issues of material fact; it may only ascertain whether such issues are present. *See Lloyd's Food Products Inc. v. Eli's Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993); *Opryland USA Inc. v. Great American Music Show Inc.,* 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992); *Olde Tyme Foods Inc. v. Roundy's Inc.*, 961 F.2d 200, 22 USPQ2d 1542 (Fed. Cir. 1992).

Regarding Opposer's standing, Opposer has properly made its pleaded registrations of record by submitting with its notice of opposition copies of those registrations obtained from USPTO records which show current title and status of those registrations. *See* Trademark Rule 2.122. Establishing ownership of an allegedly confusingly similar registration is sufficient to prove standing to oppose on the ground of likelihood of confusion. *Cunningham v. Laser Golf Corp.*, 222 F.3d

943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000). Because Opposer has shown standing on one ground, it may assert any other available grounds herein. See *Liberty Trouser Co. v. Liberty & Co., Ltd.*, 222 USPQ 357, 358 (TTAB 1983). Accordingly, there is no genuine dispute as to Opposer's standing to maintain this proceeding.

Regarding Applicant's alleged use of her mark in commerce prior to the application filing date, an applicant may not properly file an application under Section 1(a) unless the applied-for mark is in use in commerce on or in connection with all goods and services covered by the Section 1(a) basis as of the application filing date. *See* Trademark Rule 2.34(a)(1)(i); *Sinclair Oil Corp. v. Kendrick*, 85 USPQ2d 1032, 1036 n.7 (TTAB 2007). Trademark Act Section 45, 15 U.S.C. § 1127, states in relevant part as follows:

> [A] mark shall be deemed to be in use in commerce … on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce, or the services are rendered in more than one State or in the United States and a foreign country and the person rendering the services is engaged in commerce in connection with the services.

Nonuse in connection with some, but not all, of the identified goods and services as of the filing date of a Section 1(a) application is a basis for denial of registration only as to those goods and services on which the mark was not in use. *See Grand Canyon West Ranch LLC v. Hualapai Tribe*, 78 USPQ2d 1696, 1697-98 (TTAB 2006). Mere preparations to use a mark sometime in the future are insufficient to constitute use in commerce. *See Aycock Eng. Inc. v. Airflite Inc.*, 560 F.3d 1350, 90 USPQ2d 1301, 1308 (Fed. Cir. 2009).

Applicant's recitation of services is divided into two subsets which we will address separately. Regarding Applicant's alleged nonuse of her mark in connection with "Entertainment services in the nature of an on-going reality based television program," Applicant's nonuse in connection with these services is established by virtue of her admission in her answer that she had not made any use of her mark in connection with those services prior to filing her involved use-based application. *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382, 1383 (TTAB 1991). Accordingly, there is no genuine dispute that Applicant's mark was not in use in commerce in connection with "Entertainment services in the nature of an on-going reality based television program" when Applicant filed her involved application.

Regarding Applicant's alleged nonuse of the mark in connection with "Entertainment services, namely, an on-going series featuring the lives of bail bondsmen and women, their families, their search for fugitives, their envolment [sic] in their communities, how-to segments featuring advice about bail bonds, provided through cable television, webcasts, radio broadcast, media, television and blogs," we note that, by operation of Federal Rule of Civil Procedure 36(b), Applicant's admissions in response to request for admission nos. 1-12 and 14-15 regarding her failure to use her mark in connection with the recited ongoing series provided by cable television, webcasts, radio broadcast, and television conclusively establish nonuse of the involved mark in connection with the ongoing series in these

manners.[6] *See Phillies v. Phila. Consol. Holding Corp.*, 107 USPQ2d 2149, 2152 (TTAB 2013).

Nonetheless, we treat separately each manner in which the recited ongoing series is provided, notwithstanding Applicant's use of the conjunctive in her recitation of services. *See Grand Canyon West Ranch LLC*, 78 USPQ2d at 1698 (motion to amend granted, judgment entered with respect to service for which opposer contended applicant did not use mark prior to filing date; recitation of services amended *from:* "airport services; air transportation services; arranging for recreational travel tours and providing related transportation of passengers by air, boat, raft, rail, tram, bus, motorized on-road and off-road vehicles, non-motorized vehicles featuring bicycles, and domestic animals," *to:* "airport services; air transportation services; arranging for recreational travel tours and providing related transportation of passengers by air, boat, raft, bus, and motorized on-road and off-road vehicles"). Accordingly, even if we find that there is no genuine dispute that Applicant did not use the mark in connection with the recited ongoing series provided by cable television, webcasts, radio broadcast, and television, such finding

[6] Moreover, such admissions are not contradicted by Applicant's evidence. *See BankAmerica Corp. v. International Travelers Cheque Co.*, 205 USPQ 1233, 1235 (TTAB 1979) (to extent admissions are contradicted by evidence, they will not be relied on for purposes of deciding whether summary judgment is appropriate). Applicant's obtaining a domain name, launching a website, and contracting with Moga were mere preparations for her planned ongoing series. Applicant's appearance on Anderson Cooper's show was a single guest appearance on a program shown under another mark. The *Inland Empire* article does not mention any rendering by Applicant of the recited services in her involved application. Applicant's registration for another mark used in connection with "bail bonding" services is irrelevant to this case.

is not dispositive of the nonuse claim with regard to the remaining manners in which Applicant claims to have provided her ongoing series.

Rather, we find that there is a genuine dispute as to whether Applicant used the involved mark in connection with "Entertainment services, namely, an on-going series featuring the lives of bail bondsmen and women, their families, their search for fugitives, their envolment [sic] in their communities, how-to segments featuring advice about bail bonds, provided through ... media, ... and blogs" prior to her application filing date. In view thereof, Opposer's motion for summary judgment on its pleaded nonuse claim is granted with respect to for "Entertainment services in the nature of an on-going reality based television program; Entertainment services, namely, an on-going series featuring the lives of bail bondsmen and women, their families, their search for fugitives, their envolment [sic] in their communities, how-to video segments featuring advice about bail bonds, provided through cable television, webcasts, radio broadcast, ... [and] television," but is denied with respect to "Entertainment services, namely, an on-going series featuring the lives of bail bondsmen and women, their families, their search for fugitives, their envolment [sic] in their communities, how-to video segments featuring advice about bail bonds, provided through ... media ... and blogs." In view of the foregoing, the opposition will go forward against the application as to following recitation of services: "Entertainment services, namely, an on-going series featuring the lives of bail bondsmen and women, their families, their search for fugitives, their involvement in

their communities,[7] how-to video segments featuring advice about bail bonds, provided through media and blogs."[8]

Proceedings herein are resumed. Remaining dates are reset as follows.

Expert Disclosures Due	**8/26/2015**
Discovery Closes	**9/25/2015**
Plaintiff's Pretrial Disclosures Due	**11/9/2015**
Plaintiff's 30-day Trial Period Ends	**12/24/2015**
Defendant's Pretrial Disclosures Due	**1/8/2016**
Defendant's 30-day Trial Period Ends	**2/22/2016**
Plaintiff's Rebuttal Disclosures Due	**3/8/2016**
Plaintiff's 15-day Rebuttal Period Ends	**4/7/2016**

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125. Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129. If either of the parties or their attorneys should have a change of address, the Board should be so informed promptly.

[7] We *sua sponte* correct the misspelling of "involvement" in the recitation of services. *See* TMEP 707.02 (January 2015).

[8] Applicant intends to represent herself herein. While Patent and Trademark Rule 11.14 permits any person to represent herself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in an opposition proceeding to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney.