

This Opinion is Not a  
Precedent of the TTAB

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500

FRG

Mailed: December 21, 2015

Opposition No. 91218634

*Grumpy Cat Limited*

v.

*Grumpy Beverage LLC*

Before Wellington, Gorowitz and Goodman, Administrative Trademark Judges.

Opinion by Gorowitz, Administrative Trademark Judge:

Grumpy Beverage LLC (“Applicant”) seeks registration of the mark GRUMPPUCCINO in standard character format, for “coffee-based beverages containing milk”, in International Class 30.<sup>1</sup>

Grumpy Cat Limited (“Opposer”) opposes registration of the applied-for mark, alleging that Applicant is not the owner of the mark, that Applicant’s mark falsely suggests a connection with Opposer, that there is a likelihood of confusion between Applicant’s mark GRUMPPUCCINO and Opposer’s registered mark GRUMPY CAT, dilution and fraud. In its answer, Applicant denied all of the salient allegations of the notice of opposition. Applicant also advanced five “affirmative

---

<sup>1</sup> Application Serial No. 86169872, filed January 20, 2014, based on Applicant’s allegation of use of the mark in commerce under Trademark Act Section 1(a), 15 U.S.C. § 1051(a). Applicant alleges July 1, 2013 as the date of first use of the mark anywhere and August 1, 2013 as the date of first use in commerce.

defenses”: (1) no likelihood of confusion; (2) contractual estoppel; (3) equitable estoppel; (4) acquiescence; and (5) unclean hands.

On August 6, 2015, Opposer filed a motion for partial summary judgment on the ownership and likelihood of confusion claims. The motion is fully briefed.

Summary judgment is an appropriate method of disposing of cases in which there are no genuine disputes as to material facts, thus allowing such cases to be resolved as a matter of law. *See* Fed. R. Civ. P. 56(a). In deciding motions for summary judgment, the Board must follow the well-established principles that, in considering the propriety of summary judgment, all evidence must be viewed in a light favorable to the non-movant, and all justifiable inferences are to be drawn in the non-movant’s favor. The Board may not resolve disputes of material fact; it may only ascertain whether such disputes exist. *See Lloyd’s Food Prods. Inc. v. Eli’s Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993); *Opryland USA Inc. v. Great Am. 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).

The burden on the non-movant to respond arises only if the summary judgment motion is properly supported. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 160-161 (1970). If the evidence produced in support of the summary judgment motion does not meet the moving party’s burden, “summary judgment must be denied even if no opposing evidentiary matter is presented.” *Id.*, (quoting Fed. R. Civ. P. 56 advisory committee notes to the 1963 amendments).

Upon consideration of the parties' arguments and evidence, we find that, at a minimum, genuine disputes of material fact remain with respect to Applicant's relationship to Opposer, Applicant's relationship to Opposer's licensee Grenade Beverage, LLC, whether Applicant's claim of ownership of the mark GRUMPUCCINO violates the license agreement between Opposer and Grenade Beverage, LLC, and degree of similarity between the marks GRUMPUCCINO and GRUMPY CAT. In view thereof, Opposer's motion for partial summary judgment is denied.<sup>2</sup>

Proceedings are resumed.

Discovery has closed. The other dates are reset as follows:

Plaintiff's Pretrial Disclosures	<b>1/20/16</b>
Plaintiff's 30-day Trial Period Ends	<b>3/5/16</b>
Defendant's Pretrial Disclosures	<b>3/20/16</b>
Defendant's 30-day Trial Period Ends	<b>5/4/16</b>
Plaintiff's Rebuttal Disclosures	<b>5/19/16</b>
Plaintiff's 15-day Rebuttal Period Ends	<b>6/8/16</b>

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 as provided by Trademark Rule 2.129.

---

<sup>2</sup> The fact that we have identified and discussed certain genuine disputes of material fact as a sufficient basis for denying Opposer's motion for summary judgment should not be construed as a finding that these are necessarily the only disputes which remain for trial.

The parties should note that the evidence submitted in connection with the motion for summary judgment is of record only for consideration of the motion for summary judgment. Otherwise, to be considered at final hearing, any such evidence must be properly introduced in evidence during the appropriate trial period. *Levi Strauss & Co. v. Josephs Sportswear Inc.*, 28 USPQ2d 1464, 1465 n.2. (TTAB 1993).