UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Mailed: January 29, 2016

Opposition Nos. 91219403 (parent)
91221395

Margaritaville Enterprises, LLC

v.

Rachel A. Bevis

Before Richey, Deputy Chief Administrative Trademark Judge; and
Seeherman and Lykos, Administrative Trademark Judges.

By the Board:

Now before the Board is Opposer's motion (filed September 24, 2015) for summary judgment. The motion is fully briefed.

Background

Applicant, who is now appearing *pro se* in these consolidated matters, seeks to register the mark MARIJUANAVILLE on the Principal Register in standard characters for "t-shirts, hats, sweat shirts, sweat pants, jackets, socks"[1] and "drive-through retail store services featuring coffee and related goods; retail apparel

[1] Application Serial No. 86293056, the subject of parent Opposition No. 91219403, filed May 28, 2014, claiming a *bona fide* intent to use the mark in commerce.

stores; retail clothing stores."[2] As the ground for opposition, Opposer asserts a claim of priority and likelihood of confusion under Trademark Act § 2(d) in each case. Opposer bases the claims on its previously used and registered marks comprised in whole or in part of the term MARGARITAVILLE for, *inter alia*, various clothing items (in the parent case[3]) and coffee, and retail store services featuring clothing, books, or kitchen appliances (in the child case[4]).

Motion for Summary Judgment

Opposer moves for summary judgment in each case on its pleaded ground of priority and likelihood of confusion. 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(a). The party moving for summary judgment has the initial burden of demonstrating that there is no genuine dispute of material fact remaining for trial and that it is entitled to judgment as a matter of law. *See Celotex Corp. v. Catrett*, 477 U.S. 317 (1987); and *Sweats Fashions Inc. v. Pannill Knitting Co. Inc.*, 833 F.2d 1560, 4 USPQ2d 1793 (Fed. Cir. 1987). The nonmoving party must be given the benefit of all reasonable doubt as to whether genuine disputes of material fact exist; and the evidentiary record on summary judgment, and all inferences to be drawn from the undisputed facts, must be viewed in the light most favorable to the nonmoving

[2] Application Serial No. 86346860, the subject of child Opposition No. 91221395, filed July 24, 2014, claiming a *bona fide* intent to use the mark in commerce.

[3] Registration Nos. 1642132, 2729442, 2995766, 3117262, 3192542, and 4597426.

[4] Registration Nos. 1641613, 1642132, 2082231, 3593800, and 4339225.

party. *See Opryland USA, Inc. v. Great American Music Show, Inc.*, 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992). The Board may not resolve genuine disputes as to material facts; it may only ascertain whether genuine disputes as to material facts exist. *See Lloyd's Food Prods., Inc. v. Eli's, Inc.*, 987 F.2d 766, 25 USPQ2d 2027, 2029 (Fed. Cir. 1993).

For purposes of this order, we presume the parties' familiarity with the pleadings, the history of the proceeding, and the arguments and evidence submitted with respect to the motion for summary judgment. Therefore, for the sake of efficiency, this order does not summarize the parties' arguments or the evidence submitted with the motion.

Upon careful consideration of the arguments and evidence submitted with the motion, including the admission made by Applicant in her Answer to paragraph 28 of the Notice of Opposition filed in the child case (that "MARIJUANAVILLE and MARGARITAVILLE, which share the same first three and last six letters, are similar in appearance"), and drawing all inferences with respect to Opposer's motion in favor of Applicant as the nonmoving party, we find that Opposer has failed to meet its burden of establishing that there are no genuine disputes of material fact for trial. At a minimum, a genuine dispute of material fact remains as to the similarity or dissimilarity of the parties' marks in their entireties as to sound, connotation and commercial impression. As noted above, Applicant's admission pertains only to the similarity in appearance of the parties' marks in terms of their beginning and ending letters; it does not address the remaining elements we are

required to consider under the first *du Pont*[5] factor. *See Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005). In view thereof, Opposer's motion for summary judgment is **denied**.

The fact that we have identified a single genuine dispute as to a material fact as a sufficient basis for denying Opposer's motion for summary judgment should not be construed as a finding that this is necessarily the only issue which remains for trial. *See, e.g., Am. Express Mktg. & Dev. Corp. v. Gilad Dev. Corp.*, 94 USPQ2d 1294, 1301 n.5 (TTAB 2010). The parties are reminded that the evidence submitted in support of the motion for summary judgment is of record only for consideration of that motion. Any such evidence to be considered at final hearing must be properly introduced during the appropriate trial period. *See, e.g., Levi Strauss & Co. v. R. Joseph Sportswear Inc.*, 28 USPQ2d 1464 (TTAB 1993).

Schedule

Proceedings are **resumed**. Dates are **reset** on the following schedule.

Discovery Closes	2/26/2016
Plaintiff's Pretrial Disclosures	4/11/2016
Plaintiff's 30-day Trial Period Ends	5/26/2016
Defendant's Pretrial Disclosures	6/10/2016
Defendant's 30-day Trial Period Ends	7/25/2016
Plaintiff's Rebuttal Disclosures	8/9/2016
Plaintiff's 15-day Rebuttal Period Ends	9/8/2016

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

[5] *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973).

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.