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

Proceeding	91226510
Party	Plaintiff Paper Ink Press, LLC
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In Re Application Serial No. 86755721

Filing Date: September 14, 2015

Mark: REVEL

Publication Date: February 9, 2016

Opposition No. 91226510

Int'l Class: 016

PAPER INK PRESS LLC,

Opposer

Against

TRUE FABRICATIONS, INC.

Applicant

OPPOSER'S REPLY TO APPLICANT'S OPPOSITION

I. BACKGROUND

Applicant, True Fabrications, Inc. (“Applicant”), seeks registration of the trademark **REVEL** by its Trademark Application S/N 86755721 (“The Application”) claiming a first date of use of March 23, 2015 for IC 016 goods described therein including “gift wrap”.

Paper Ink Press, LLC (“Opposer”), opposes the registration of Applicant’s mark **REVEL** based on Opposer’s common law and statutory rights in the trade name and trademark **WRAP AND REVEL** which Opposer has not abandoned and has used throughout the United States and in many foreign countries continuously in connection with IC 016 goods including, *inter alia*,

wrapping paper and related goods since at least March 5, 2014. Declaration of Melissa Bilyeu (“MB Dec.”) ¶ 3.

To streamline the process in hopes of an early decision, the parties have entered into a written stipulation (HMB Dec. Exh. F) that provides: (1) the goods are the same; (2) the goods travel in the same channels of commerce to the same customers; (3) that the earliest priority date that Applicant can and does claim is March 23, 2015, (4) that Opposer is the owner of Trademark Registration No. 4,951,249 for the mark WRAP AND REVEL in IC 016, claiming a first date of use in commerce of April 5, 2014, for IC 016 goods described therein including gift wrapping paper; and (5) the only issue to be decided by the Board is “likelihood of confusion”; that is, whether a typical customer is likely to be confused into believing that REVEL brand wrapping paper or similar paper goods was made by, or sponsored by, or affiliated with the source of WRAP AND REVEL brand wrapping paper or similar paper goods. HMB Dec. Exh. F.(Stipulation).

II. APPLICANT HAS NOT RAISED AN ISSUE OF MATERIAL FACT

A. Channels Of Trade And Customers Are The Same

Applicant’s response to Opposer’s motion for summary judgment fails to raise a material issue of fact.

In Section IV of its response, Applicant argues that there is “A Genuine Issue of Material Fact Regarding Channels of Trade”. This argument is without merit for at least three reasons: (1) where the goods are identical (as they are here – “paper gift wrap” and “wrapping paper”); (MB Dec. ¶ 3; The Application), and the description of Applicant’s goods does not restrict the channels of trade or the likely customers (which it does not), the channels of trade and likely customers are assumed the same. See, e.g., *Hewlett-Packard Co. v Packard Press, Inc.*, 281

F.3d 1261, 1268, 62 USPQ2d, 1001, 1005 (Fed. Cir. 2002); *Eveready Battery Co. v Green Planet Inc.*, 91 USPQ2d 1511, 1515 (TTAB 2009): (2) Applicant stipulated that the channels of trade and customers were the same. (Exh. F, HMB Dec. ¶ 4, Stipulation); and (3) Applicant has failed to produce a single shred of evidence to support its arguments and representation of “fact” regarding the channels of trade, customer profiles, and marketing strategy even if those were issues in this matter, which, based on (1) and (2) above, they clearly are not.

B. Opposer’s Mark — WRAP AND REVEL — Is Not Descriptive

In section V of its response, Applicant appears to argue that Opposer’s mark - WRAP AND REVEL - is descriptive because it includes the word “WRAP” which relates to the goods: wrapping paper. Because the word “WRAP” relates to the goods, it must be discounted leaving only the word “REVEL” as the dominant feature of the mark which is nearly identical to Applicant’s mark and the word that consumers are likely to remember and associate with the source. See *In re Chatam Int’l Inc.*, 380 F.3d 1340, 1343, 71 USPQ2d 1944, 1946 (Fed. Cir. 2004) (“Viewed in their entirety *with non-dominant features appropriately discounted*, the marks [GASPAR’S ALE for beer and ale and JOSE GASPAR GOLD for tequila] become nearly identical.”) Emphasis added.

Applicant itself argues that REVEL is fanciful when used with wrapping paper. Moreover, the parties’ stipulation did not include “descriptiveness” as an issue to be decided. (Exh. F, HMB Dec. ¶ 4, Stipulation).

C. The Issue Of Likelihood Of Confusion Is A Legal Determination For The Board

Applicant appears to argue in Section VI of its response that there is a material issue of fact as to likelihood of confusion.

The ultimate issue of likelihood of confusion is a legal determination for the Board based on underlying facts. *In re Majestic Distilling Co.* (Fed.Cir. 2003) 315 F.3d 1311, 1314.) (“We review a determination of likelihood of confusion as a question of law based on findings of relevant underlying facts.”) Thus, to raise a material issue of fact Applicant must raise such an issue with regard to one of the underlying facts to which it has not stipulated. It has not done so.

D. That the Marks Are Similar Is Beyond Serious Debate

In Section III of its response Applicant asserts that there is a material issue of fact as to the similarities of the marks. Applicant’s argument seems to be based entirely on the fact that the marks are not identical. Applicant argues that its mark is only one word – REVEL - and Opposer’s mark three words - WRAP AND REVEL. The basis of the argument is that Opposer always uses its mark with the three words: WRAP AND REVEL.

That the marks are “similar” is beyond serious dispute. Whether or not the similarity is such as to likely cause confusion as to source is one of several factors to be weighed by the Board in reaching the question of law of likelihood of confusion.

Furthermore, where the goods of the parties are virtually identical, as they are here (gift wrapping paper and gift wrap), “the degree of similarity [of the marks] necessary to support a conclusion of likely confusion declines.” *In re Dixie Resis.*, 105 F.3d 1405, 1408, 41 USPQ2d 1531, 1533 (Fed. Cir, 1997).

III. Conclusion

Applicant’s disregard thereof notwithstanding, the parties have stipulated to the relevant underlying facts, leaving the Board with a pure question of law: the likelihood of confusion as to source that would be caused by Applicant’s use of the mark REVEL on the same goods (gift wrapping paper) traveling in the same channels of commerce to the same customers as Opposer’s

goods (gift wrap) distributed throughout the United States under the brand name WRAP and REVEL, where Opposer has priority.

Applicant submits that for all of the reasons set forth above, it would be injured if The Application was allowed and requests that the Opposition be sustained.

Date: October 4, 2016

Respectfully submitted,
PAPER INK PRESS, LLC

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