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

Proceeding	91238706
Party	Defendant Edison Chinese Chorus Inc. AKA Xiang Yin Chorus or Xiang Yin He Chang Tu-an
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Submission	Motion to Dismiss - Rule 12(b)
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Date	10/03/2018
Attachments	Motion to dismiss the 3rd Amended Opposition.pdf(169856 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Opposition No. 91238706
Application Serial Nos. 87566170 and 87538374

Xiang Yin He Chang Tuan Inc.
Opposer

Vs.

Edison Chinese Chorus Inc.
Applicant

MOTION TO DISMISS THE THIRD AMENDED NOTICE OF OPPOSITION

Comes now the Applicant, Edison Chinese Chorus Inc., by counsel, Cheng Q. Song, and for its Motion to dismiss the third amended notice of Opposition for failure to state a claim pursuant to Fed.R. Civ. P. 12(b)(6) and for lack of standing.

FACTS

The THIRD AMENDED NOTICE OF OPPOSITION repeated the same facts and claims as it made in Opposer's first and second amended notices of Opposition. It alleges that on 2/28/2018 Opposer obtained a Trademark assignment from its "Creator", Ms. Qian Tan. Opposer admitted that the user of the Trademark was Edison Chinese Chorus Inc. since "Ms. Tan allowed Edison Chinese Chorus Inc., the Applicant, to use this name (Mark)" back in 2002 when her husband was a "leader" of the Applicant. The Opposer further admitted that Ms. Tan allowed the Opposer to use the Mark only after the Principal of the Opposer, Mr. Bin Lv was "ousted" by Edison Chinese Chorus Inc. in 2017 and formed a new organization called Xiang Yin He Chang Tuan Inc. The Opposer admitted that from 2002 to 2017 the "Mark" was always used by the Applicant, Edison Chinese Chorus Inc. since the new organization established by Mr. Bin Lv and Ms. Tan's husband started only in 2017.

ARGUMENT

- (1) Since the third amended notice of opposition made identical claims as the second amended notice of opposition the Argument section of Applicant's Motion to Dismiss the Second Amended Notice of Opposition is herein incorporated by reference in its entirety.
- (2) The Trademark Law is clear that the trademark rights are acquired by adoption and use of a trademark but the notice of oppositions does not give any factual allegations that Ms. Tan or the Opposer has ever used the mark before 2017 other than that she allows "Applicant used the mark"[Page 2, Paragraph 2, line 2, Motion to Amend Opposition, filed on Feb. 26, 2018 by Opposer].
- (3) The English translation of the trademarks is "Chorus of Homeland Voices". A "Chorus" by definition must have more than one singer and therefore. Ms. Tan by herself, who is not even a singer, could not have used the trademark to acquire the ownership of the trademarks. From 2002 to present, only the Applicant, Edison Chinese Chorus Inc., which has more than 100 registered members in which Ms. Tan's husband was a member from 2002 to 2017, is the user and the owner of the trademarks.

CONCLUSION

For the foregoing reasons the Applicant's Motion should be granted and the Third Amended Notice of Opposition should be dismissed.

Respectfully submitted:

By: /s/Cheng Q. Song

Cheng Q. Song, Ph.D. J.D.
Attorney for the Applicant
Dated: October 3, 2018

Certificate of Service

I hereby certify that a true and complete copy of the foregoing Motion to Dismiss The Third Amended Notice of Opposition has been served on H. Danny Kao, PhD. JD, Counsel for the Opposer, by forwarding said copy on October 3, 2018, via email to dkao@kaolawus.com.

Signature: /s/Cheng Q. Song

Date: October 3, 2018