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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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Attachments	Response to Opposer Motion to Strike Evidence.pdf(226959 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

RESPONSE TO OPPOSER'S MOTION TO STRIKE APPLICANT'S NEW EVIDENCE

Comes now the Applicant, Edison Chinese Chorus Inc., by counsel, Cheng Q. Song, and hereby submits the following brief in response to "Opposer's Motion to Strike Applicant's New Evidence Set Forth In Its Reply Brief".

Introduction

Opposer alleges that Applicant asserted new exhibits, assertions and statements of facts, and arguments in its Reply Brief to "Opposition to Applicant's Motion for Summary Judgment and Cross-Motion for Summary Judgment by Opposer". ("Opposition")

Facts/Arguments

In order to clarify the issues raised by Opposer we arrange the following facts and arguments using the same numbers as used by Opposer.

1. Opposer alleges that Applicant, for the first time, cited Opposer's first filed notice of opposition which was effectively withdrawn.

Applicant has cited the information disclosed in Opposer's notice of opposition many times before, such as, in the Motion for Summary Judgment (paragraph Statement of Fact, lines 1-3), in the Motion to Dismiss (paragraph Fact, line 1-4) and in many prior documents filed with the board.

Opposer's first filed notice of opposition is filed by Mr. William T. Anastasio, attorney of record for Opposer at that time. The amended opposition only added more facts and legal arguments to overcome Applicant's Motion to Dismiss but the original fact statement was never amended or corrected.

Applicant's brief is also a direct response to Opposition in which Opposer contends that "Applicant wrongfully alleges Opposer filed for the identical trademarks in New Jersey" (page 6, item no. 10 of Opposition)

2. Opposer alleges that Applicant, for the first time, cited a new alleged first use of its mark and Applicant did not amend its application to do so.

Applicant has shown that its first use date is now at least as early as September 6, 2001 in its reply to First Set of Interrogatories (Exhibit RI13-7) and many other documents filed with the board. The trademark application's question and answer field as shown before was filled with "The first use date is At least as early as 2004-10-2" which is not in contradiction with the current findings and therefore, no amendment is needed.

Applicant's brief is also a direct response to Opposition in which Opposer contends that "it is undisputed that Applicant's first use in commerce for the trademarks is alleged in its registrations to be 2004-10-2". (page 8, item no. 4 of Opposition)

3. Opposer alleges that Applicant, for the first time, cited new exhibits, e.g. ORD6 of Opposition, RI1-1, RI13-7, RD1-1 and RD2-2.

ORD6 of Opposition was filed with Opposition by Opposer itself, which is a Declaration made by Ms. Tan under Oath that she allowed the Chinese name "Xiang Yin He Chang Tuan" to be used just for the chorus in which her husband was a member and Mr. Lv was a musical director, which is Applicant.

Now Opposer claimed that ORD6 was later withdrawn and amended (page 2, lines 18-20 of "Opposer's Motion to Strike Applicant's New Evidence"). We are not aware that such Declaration under Oath could be withdrawn or amended under normal circumstances. Opposer might want to give us the compelling reason why and when this Declaration was withdrawn or amended.

RI1-1, RI13-7, RD1-1 and RD2-2 are the exhibits which were served to Opposer together with the replies to the First Set of Discovery Requests from Opposer previously.

Applicant's brief is also a direct response to Opposition in which Opposer contends that Ms. Tan first licensed the trademarks to the Edison Chinese School Vocal Group (page 10, lines 9-10 of Opposition) which is obviously in contradictory with Ms. Tan Declaration under the Oath.

4. Opposer alleges that Applicant, for the first time, cited a new set of facts, exhibits, factual allegations and arguments (e.g., item 1-3 above).

As discussed above, none of the facts, exhibits, factual allegations and arguments was cited by Applicant for the first time and all of those were the direct response to Opposition filed by Opposer on July 17, 2019.

Conclusion

The allegation made by Opposer that Applicant, for the first time, cited facts, exhibit, arguments is false and in addition the brief was made to respond to Opposition directly. Opposer's Motion to Strike shall be denied.

Opposer has changed their story several times. At beginning, they claimed that they filed identical trademarks in the State of New Jersey days before Applicant's application, and later they claimed that there is a "secret agreement" between the husband and wife to allow the Applicant to use the Chinese name, and finally, they claimed that Ms. Tan first assign her right to another entity, a Vocal Group, which was only a musical class and was not an organization and which is obviously in contradictory to the Declaration made by Ms. Tan previously.

Even though Opposer made many changes in their story and even if Opposer's Motion to Extend Time to Respond to Applicant's Request for Admissions is granted, **the fact of this case is relatively simple and undisputed**. That is, the principal of Opposer, Mr. Lv and Mr. Wen was a musical director and a member of Applicant from 2001 to 2017, respectively and they had no control over Applicant at any time and therefore, Applicant is the only rightful owner of the trademark.

Applicant requests respectfully that Applicant's Motion for Summary Judgment is granted for the justice and for the sake of Judicial economy.

Respectfully submitted,

By: /s/Cheng Q. Song

Cheng Q. Song, Ph.D. J.D.
Attorney for the Applicant
Dated: August 9, 2019

Certificate of Service

I hereby certify that a true and complete copy of the foregoing Response to Opposer's Reply Brief and Facts/Evidence has been served on H. Danny Kao, KAO & Associates, Counsel for the Opposer, by forwarding said copy on August 9, 2019, via email to dkao@kaolawus.com.

Signature: /s/Cheng Q. Song

Date: August 9, 2019