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

Proceeding	91267740
Party	Defendant Sun Stars & Sons Pte. Ltd.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Carpathian Springs S.A. and Valvis Holding
S.A.,

Opposers,

v.

Sun Stars & Sons Pte. Ltd.,

Applicant.

Opposition No. 91267740

Serial No.: 88477788

Mark:



APPLICANT'S REPLY BRIEF

Applicant maintains the position that the Notice of Opposition filed on February 19, 2021 by the Opposers lacks enough definition to its claims to allow Applicant a fair opportunity to respond. TBMP §309.03(a)(2).

Opposer, in fact, does not dispute that the marks in their opposition are different. Furthermore, Opposer admits that the foreign actions may cause one of the registrations to cancel.

Therefore, Applicant's motion should be granted, and additionally Opposer should explain how this action should not be suspended pending resolution of the foreign action.

I. The use of "Opposer's Mark" remains unclear

Applicant has argued that it is absolutely unclear as to what Opposer is asserting because Opposer has defined its "mark" as a combination of not only the two marks but also the "overall design of the bottle".

As set forth in Opposer's Response, the Opposers' Mark is "collectively defined" as

- (1) The Carpathian Bottle
- (2) The Valvis Bottle
- (3) The overall design of the bottle.

Applicant further admits that the Carpathian Bottle, the Valvis bottle and the “overall design of the bottle” are not 100% identical.

Thus, Applicant is arguing not against the Carpathian Bottle, not against the Valvis Bottle and not against “the overall design of the bottle” – whatever that may mean. Rather, Applicant is arguing against a fourth item which is a combination (likely an ever changing and morphing combination) of various features that are picked and chosen from any one of (1), (2) and (3). As such, it is impossible to know what actual right is being asserted.

As to the *In re National Data Corp*¹ case cited, Applicant is unclear as to how that case is applicable to this situation. In an ex parte appeal from the TTAB, the Federal Circuit dealt with the analysis of a likelihood of confusion that turned on differences between two marks being two highly descriptive terms. This case has nothing to do with the creation of a hypothetical new mark as the mark to which Applicant’s mark is compared. Nor does the case have anything to do with packaging configuration or trade dress. Thus, any citation to this case is largely not relevant. See, *In re National Data Corp.*, 753 F. 2d 1056, 1060 (Fed. Cir. 1985).

Thus, it is not possible for Applicant to respond to an opposition that is based upon a moving target composed of features from two different registrations, owned by two different people, with different bottle configurations, and, additionally with a nebulous “the overall design of the bottle.” Thus, Applicant’s motion should be granted.

¹ The proper citation of the case is **753** F.2d 1056.

II. The Foreign Proceedings Have An Impact

Applicant submits that the vast and ongoing matters in Romania and the European Union have called into question as to whether these proceedings should be suspended. And, in those matters, the Opposer has taken vastly different positions – that is factual positions – pertaining to the same issues as they have presented and taken in the present action.

In particular, Opposer admits that one of the actions may result in the IB causing the cancellation of U.S. Registration No. 4,619,128 (which is the “Valvis Bottle” Registration cited above). See, Opposer’s Response, p. 4, n. 1. This is one of the registrations that is relied upon for this Opposition. Second, features of this Registration form the nebulous definition of Opposer’s trademark.

Moreover, whereas in the past Opposer has taken the position that there is no likelihood of confusion, here, Opposer has taken a diametrically opposing position. Again, such different positions, in *highly related cases*, is highly suspect.

Finally, reliance on offhanded dicta from *Miles Laboratories, Inc. v. International Diagnostic Technology, Inc.*, 220 USPQ 438, 445 (TTAB 1983) is likewise misplaced. In that case, the TTAB would give “comity” to a Swedish tribunal decision. However, in this matter, the results of the cases in Romania and/or the European Union will have a *direct* impact on the present matter. And, a direct impact on the so-called “Opposer’s Mark”.

Thus, suspension of the action pending resolution of at least some of these European Union and Romanian National Cases may be warranted. See, *i.e.*, *Birlinn Ltd. v. Angus Stewart*, 111 USPQ2d 1905 (TTAB 2014), *citing Marie Claire Album S.A. v. Kruger GmbH & Co. KG*, 29 USPQ2d 1792, 1793-4 (TTAB 1993).

III. Conclusion

Applicant still maintains and respectfully seeks an order from the Trademark Trial and Appeal Board for entry of an Order requiring a more definite statement of the pleadings of Opposers in their Notice of Opposition.

Dated: May 6, 2021

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