

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: May 21, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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Neaux Coffee LLC

v.

NEAU Brands, Inc.

(by change of name from *Standard Magnetics USA, Inc.*)¹

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Opposition No. 91284466

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Jay Calhoun of The Calhoun Law Firm, PLC, for
Neaux Coffee LLC.

Britt L. Anderson and Matthew Samet of Perkins Coie LLP, for
Neau Brands, Inc.

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Before Wellington, Allard, and Lavache,
Administrative Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

Applicant NEAU Brands, Inc. filed an application seeking registration on the
Principal Register of the mark **NEAU COFFEE** (with a disclaimer of COFFEE) for

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¹ On May 29, 2024, Applicant filed a name change (executed on May 20, 2024) from Standard Magnetics USA, Inc. to NEAU Brands, Inc. with the Assignment Branch of the United States Patent and Trademark Office (USPTO) (recorded at Reel/Frame Nos. 8445/0440).

“coffee; coffee beans; ground coffee; coffee in single use filters; coffee capsules, filled; organic coffee,” in Class 30.²

Opposer Neaux Coffee LLC opposes registration of Applicant’s mark on the ground of likelihood of confusion under Trademark Act (“the Act”) Section 2(d), 15 U.S.C. § 1052(d), based on Opposer’s alleged common law rights in the marks **NEAUX** and **NEAUX COFFEE COMPANY** for “brewing [and] selling coffee” and for “coffee, teas, blended drinks, and energy drinks” based on its use of the mark “in interstate commerce since at least as early as August 2020.”³

Applicant’s answer denies all salient allegations in the notice of opposition.⁴

The parties have fully briefed this proceeding.

I. The Record

The record includes the pleadings and, by rule, Applicant’s involved application file. *See* Trademark Rule 2.122(b)(1), 37 C.F.R. § 2.122(b)(1).

Opposer did not introduce any evidence during its trial period.

Applicant filed a notice of reliance during its trial period. The notice of reliance includes copies of screenshots from various websites which Applicant asserts are:⁵

... relevant to the issue of priority, among other issues, as it demonstrates

² Application Serial No. 97311713, filed March 14, 2022, claiming a bona fide intention to use the mark in commerce, under Trademark Act Section 1(b), 15 U.S.C. § 1051(b).

³ Not. of Opp. ¶¶ 1-2, 1 TTABVUE 3. Opposer also pleaded that “Applicant’s mark so closely resembles Opposer’s mark that it falsely suggests a connection with Opposer within the meaning of 2(a) of the Trademark Act.” Not. of Opp. ¶ 12, 1 TTABVUE 4. However, Opposer’s assertion of a false suggestion of a connection was previously stricken from the notice of opposition by Order of the Board. 9 TTABVUE 5. This same Order granted Opposer time to replead this claim, but Opposer did not do so.

⁴ Applicant’s Answer, 10 TTABVUE.

⁵ 42 TTABVUE 2.

that Opposer has a priority date later than the Applicant's constructive first use date of March 14, 2022, Opposer did not use its alleged NEAUX and NEAUX COFFEE COMPANY marks in commerce in connection with the sale of goods until after March 14, 2022, and/or Opposer's only evidence that it has used its alleged NEAUX and NEAUX COFFEE COMPANY marks in commerce in connection with the sale of goods post-dates March 14, 2022.

Opposer did not submit any rebuttal evidence, but raised evidentiary objections to some of Applicant's notice of reliance materials.⁶

Finally, we point out that the materials Opposer attached to its Notice of Opposition (*see* 1 TTABVUE 6-9) do not form part of the record. Trademark Rule 2.122(c) ("Except [pleaded registrations], an exhibit attached to a pleading is not evidence on behalf of the party to whose pleading the exhibit is attached, and must be identified and introduced in evidence as an exhibit during the period for the taking of testimony.").⁷

II. Opposer's Entitlement to a Statutory Cause of Action

Establishing an entitlement to a statutory cause of action is a threshold requirement in every inter partes case. *See Corcamore, LLC v. SFM, LLC*, 978 F.3d 1298, 1303 (Fed. Cir. 2020); *Australian Therapeutic Supplies Pty. Ltd. v. Naked TM, LLC*, 965 F.3d 1370, 1373 (Fed. Cir. 2020). Thus, Opposer, as plaintiff in this opposition proceeding, must prove its entitlement to a statutory cause of action by a

⁶ 43 TTABVUE. Opposer maintained its objections to this evidence in its brief "on grounds including hearsay, lack of authentication, relevance, and self-serving character." 44 TTABVUE 10. Because we do not rely on any of Applicant's evidence in favor of Applicant in reaching our decision, it is unnecessary to address Opposer's objections.

⁷ Opposer was informed of this in the Board's previous Order and was also informed as to how to make the evidence properly of record (9 TTABVUE 3-4), but Opposer did not do so.

preponderance of the evidence. *See, e.g., Made in Nature, LLC v. Pharmavite LLC*, No. 91223352, 2022 TTAB LEXIS 228, at *8.

To establish an entitlement to a statutory cause of action, Opposer must demonstrate that it has: (1) an interest falling within the zone of interests protected by the statute, and (2) a reasonable belief in damage proximately caused by the registration of the mark. *Curtin v. United Trademark Holdings, Inc.*, 137 F.4th 1359, 1367 (Fed. Cir. 2025) (citing *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 129-134 (2014)); *Corcamore*, 978 F.3d at 1304-07; *see also Made in Nature*, 2022 TTAB LEXIS 228, at *18.

As noted, Opposer did not introduce any evidence. However, Applicant’s notice of reliance includes materials wherein Applicant asserts their relevance is to show use of Opposer’s NEAUX and NEAUX COFFEE COMPANY marks in commerce, albeit use occurring after Applicant’s filing date. In its brief, Applicant further acknowledges that the evidence it submitted “supports Opposer’s first use around August 2022.”⁸

Thus, although Opposer did not submit any evidence to prove its entitlement to this cause of action, Applicant did. In other words, Applicant’s evidence and its statements regarding Opposer’s use of its marks establish that Opposer is in the business of selling coffee under its pleaded marks and is more than a mere interloper. Opposer is entitled to oppose Applicant’s application. *N.Y. Yankees P’ship v. IET Prods. & Servs., Inc.*, No. 91189692, 2015 TTAB LEXIS 96, at *8 (“Opposer’s standing

⁸ 45 TTABVUE 7.

is established with respect to its likelihood of confusion and dilution claims by its . . . registrations . . . which the record shows to be valid and subsisting, and owned by Opposer.”) (citing *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 945 (Fed. Cir. 2000)); *see also Corcamore*, 978 F.3d at 1306.

III. Opposer’s Failure to Prove Priority

With regard to Opposer’s assertion of common law rights for the marks NEAUX and NEAUX COFFEE COMPANY, Opposer must demonstrate it owns “a mark or trade name previously used in the United States” 15 U.S.C. § 1052(d). To establish such prior common law rights, Opposer “must prove by a preponderance of the evidence that its mark[] is distinctive, inherently or otherwise, and that [it] acquired rights in the mark[] prior to any date on which Applicant can rely.” *Major League Baseball Players Ass’n v. Chisena*, No. 91240180, 2023 TTAB LEXIS 117, at *24, *aff’d unpub’d*, No. 2023-2073, 2026 U.S. APP. LEXIS 395 (Fed. Cir. 2026). *See also RxD Media, LLC v. IP Application Dev. LLC*, No. 91207333, 2018 TTAB LEXIS 37, at *23 (“In other words, because unregistered marks are not entitled to the presumptions established under Sections 7(b)-(c) of the Trademark Act, it is Opposer’s burden to demonstrate that it owns a trademark that was used prior to Applicant's first use or constructive use of its mark and not abandoned.”).

It is also well-settled, and important to this proceeding, that an applicant may rely on the filing date of its application (i.e., the “constructive use” date) for purposes of priority. *See* Section 7(c) of the Trademark Act, 15 U.S.C. § 1057(c) (an application constitutes constructive use of the mark conferring a right of priority contingent upon registration); *Rapid Inc. v. Hungry Marketplace, Inc.*, No. 91236033, 2022 TTAB

LEXIS 260, at *18 (citing, inter alia, *Syngenta Crop Prot. Inc. v. Bio-Chek LLC*, No. 91175091, 2009 TTAB LEXIS 70, at *18 (“[A]pplicant may rely without further proof upon the filing date of its application as a ‘constructive use’ date for purposes of priority.”)).

Opposer, however, makes the argument that Applicant cannot rely Section 7(c) constructive use provision “without actual use.”⁹ This is not true. Although Applicant did not submit any evidence of use prior to the filing of its application, it is also well-settled that an applicant need not do so in order to rely upon the filing date of its application as its earliest possible priority date. *See, e.g., H.D. Lee Co. v. Maidenform, Inc.*, No. 91168309, 2008 TTAB LEXIS 21, at *13-14 (owner of intent-to-use application may rely on its filing date as constructive use date for purposes of priority). “[T]here can be no doubt but that the right to rely upon the constructive use date comes into existence with the filing of the intent-to-use application and that an intent-to-use applicant can rely upon this date in an opposition brought by a third party asserting common law rights.” *Zirco Corp. v. Am. Tel. and Tel. Co.*, No. 91084979, 1991 TTAB LEXIS 43, at *8. Of course, such priority rights may expire if an applicant who files an intent-to-use application never perfects the application by later filing proof of actual use in commerce.

Put plainly, it was Opposer’s burden to prove by a preponderance of the evidence that it acquired common law rights in its pleaded marks based on use of those marks prior to March 14, 2022.

⁹ 44 TTABVUE 7.

Again, Opposer submitted no evidence. As to the Internet materials submitted by Applicant regarding Opposer's use of its marks, we have found these are sufficient for purposes of establishing Opposer's entitlement to bring its claim. However, these materials do not and cannot prove use of Opposer's marks prior to the filing date of Applicant's application. We cannot rely on any purported dates within those materials inasmuch as they are merely screenshots from websites and, without supporting testimony, any statements made in these materials or the websites are hearsay and not reliable for their truth. "Internet evidence is only admissible for what it shows on its face, and because it does not fall within an exception to the hearsay rule, will not be considered to prove the truth of any matter stated therein." *WeaponX Performance Prods. v. Weapon X Motorsports, Inc.*, No. 91221553, 2018 TTAB LEXIS 72, at *23. Indeed, Opposer, objected to Applicant's evidence on this very basis, namely, that statements made within the materials constitute hearsay.¹⁰

In sum, Opposer has failed to prove prior use of its pleaded marks, a critical element of its Section 2(d) claim. Opposer thus cannot prevail on the claim of likelihood of confusion because it has submitted no evidence that it owns "a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States." Trademark Act § 2(d). We need not reach the issue of whether there is a likelihood of confusion.

Decision: The opposition to registration of Applicant's **NEAU COFFEE** mark is dismissed.

¹⁰ See Note 6.