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

Proceeding no.	91290338
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UNITED STATES PATENT AND TRADEMARK OFFICE
~TRADEMARK TRIAL AND APPEAL BOARD~

In the Matter of Application Serial No.: 97/695554

Filed: November 29, 2023

For the mark: **SSSNIPERWOLF**

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CHANNEL RED, LLC, Opposer, v. ALIA SHELESH, Applicant.	Opposition No.: 91290338
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MOTION TO DISMISS

Alia Shelesh (“Applicant” or “Shelesh”) moves to dismiss Channel Red, LLC’s¹ (“Opposer” or “Young”) Notice of Opposition against Applicant’s trademark application for the name or likeness of a particular individual, “SSSniperwolf,” pursuant to [Rule 12\(b\)\(6\)](#) of the Federal Rules of Civil Procedure and [37 C.F.R. § 2.116\(a\)](#).

¹ Notably, Shelesh is one of Channel Red’s managers and the 50% member. The other manager and member is Evan Young, Shelesh’s soon-to-be ex-husband. The parties are currently engaged in two lawsuits (Maricopa County Superior Court Case Nos. FN2022-051945 and CV2023-053179): a dissolution of marriage lawsuit and a civil lawsuit concerning Channel Red. It is questionable whether Young, as an equal co-manager and co-member in Channel Red can cause Channel Red to do anything, including opposing the Application Serial No. 97/695554 (“Application”) because he would need Shelesh’s consent as co-manager and equal member. For purposes of this Motion to Dismiss, Shelesh will refer to the Opposer as her ex-husband, Young, the person truly behind the Notice of Opposition.

I. BACKGROUND.

Shelesh, widely known by her commercial alias and online moniker "SSSniperwolf," is a prominent and well-known gamer and social media influencer. Shelesh has been utilizing the pseudonym "SSSniperwolf" since 2011.

In January 2013, Young (Shelesh's soon-to-be ex-husband) purportedly approached Shelesh with a proposal to create a YouTube channel entitled *SSSNIPERWOLF YOUTUBE CHANNEL* ("Channel"), leveraging Shelesh's sobriquet, "SSSniperwolf" (even though Shelesh already maintained her own previous YouTube channel). Young claims that he created login credentials for the Channel using a blend of biographical details from both Young and Shelesh. *Notice of Opposition* ("Not.") at ¶15. Additionally, Young alleges that he assisted in the creation and operational aspects of the Channel, encompassing activities such as gameplay recording, scriptwriting, video editing, and content posting. *Id.* ¶¶14-15, 18-20. While Shelesh disputes these allegations, notably, Young fails to allege any involvement in creating the pseudonym "SSSniperwolf." *Id. generally*. Thereafter, Shelesh and Young formed Channel Red in 2017 as co-managers and 50-50 members. *Id.* at ¶¶1-2. They established the entity for tax purposes and to collect and distribute the revenue generated from the Channel and its associated assets. *Id.* at ¶¶25.

Young alleges that the two verbally agreed to share any of the Channel's revenue equally and that they maintained joint control and decision-making authority over the Channel's operations and content creation. *Id.* at ¶¶17, 21, 27-28, and 32. While that may or may not be accurate, again, Young makes no allegations that he had any control over the stage name "SSSniperwolf." Following Channel Red's formation, Young claims that Shelesh verbally agreed to transfer the rights to the name "SSSniperWolf" to Channel Red. *Id.* at ¶¶29-30. No written documentation exists evidencing the transfer or assignment of Shelesh's rights to the pseudonym "SSSniperwolf" to Channel Red.

II. LEGAL STANDARD

Rule 37 C.F.R. § 2.116(a) provides “[e]xcept as otherwise provided, and wherever applicable and appropriate, procedure and practice in *inter partes* proceedings shall be governed by the Federal Rules of Civil Procedure.” Accordingly, Rule 12(b)(6), Fed. R. Civ. P., governs this dispute. Under 12(b)(6) a motion to dismiss is a test solely of the legal sufficiency of the complaint. *Ileto v. Glock Inc.*, 349 F.3d 1191, 1199-1200 (9th Cir. 2003). To survive a motion to dismiss, a plaintiff must allege sufficient facts that, if proved, would establish that: (1) the plaintiff has standing to maintain the proceeding, and (2) a valid ground exists for opposing the mark. See *Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 187 (CCPA 1982). Specifically, a complaint “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In particular, to state a claim plausible on its face, the claimant must allege well-pleaded factual matter and more than “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555). “For purposes of determining the motion, all of [Opposer’s] well-pleaded allegations must be accepted as true, and the [claims] must be construed in the light most favorable to [Opposer].” *Id.* Here, even under those low standards, Young’s Notice of Opposition fails to state a viable claim for ownership over the trademark “SSSniperWolf.”

A. Shelesh owns the Pseudonym SSSniperWolf.

Shelesh has been utilizing the pseudonym “SSSniperWolf” since 2011. Oddly, Young does not assert that he co-created the pseudonym or that *he* is known as SSSniperWolf. *Notice of Opposition, generally*. Indeed, any cursory internet search reveals that **only one person** is known as SSSniperWolf – Alia Shelesh, the Applicant. See for example <https://en.wikipedia.org/wiki/SSSniperWolf> (“**Alia ‘Lia’ Shelesh** (born October 22, 1992), better known as **SSSniperWolf**, is an English-American YouTuber.”). A simple

Google search for "SSSniperwolf" yields thousands of websites, articles, videos, and images related to Shelesh. Numerous articles use Shelesh's real name interchangeably with her pseudonym "SSSniperWolf," further solidifying the association between the two. Young cannot credibly claim that the Shelesh is not "SSSniperwolf" or that "SSSniperwolf" is not intrinsically linked to Shelesh.

Section 2(c) of the Trademark Act, [15 USC § 1052\(c\)](#), prohibits registration of a mark that "consists of or comprises a name, portrait, or signature identifying a particular living individual except by his written consent" Section 2(c)'s provisions apply when an applicant registers a person's full name, first name, surname, stage name, pseudonym, or nickname, so long as the name identifies a particular living person. [In re Elster](#), 2022 USPQ2d 195, at *2-3, *rev'd on other grounds*, 26 F.4th 1328, 2022 USPQ2d 195 (Fed. Cir. 2022); [Krause v. Krause Publications, Inc.](#), 76 USPQ2d 1904, 1909 (TTAB 2005) (citing [In re Sauer](#), 27 USPQ2d 1073 (TTAB 1993), *aff'd*, 26 F.3d 140, 32 USPQ2d 1479 (Fed. Cir. 1994) (Section 2(c) applicable to "not only full names, but also surnames, shortened names, nicknames, etc., so long as the name in question does, in fact, 'identify' a particular living individual"). Undoubtedly, a party may have a protectable property right in any term the public has come to associate with the plaintiff's goods or services. *See* [Big Blue Prods., Inc. v. Int'l Bus. Machs. Corp.](#), 19 USPQ2d 1072 (TTAB 1991) (BIG BLUE for IBM) *cited in* [Fiat Grp. Automobiles S.p.A. v. ISM, Inc.](#), 94 USPQ2d 1111, 1115 (TTAB 2010); [N.Y. Yankees P'ship v. IET Prods. & Servs., Inc.](#), 114 USPQ2d 1497, 1504-05 (TTAB 2015).

There cannot be any viable dispute that "SSSniperwolf" is Shelesh's widely recognized pseudonym. The public has consistently associated this moniker with Shelesh, who is one of the most recognizable social media personalities associated with online video games. Braun, Freddie, ["Three Female Pro-Gamers On The Perks Of Online Community"](#), [British Vogue](#), (April 10, 2023). Indeed, Young even concedes that Shelesh is the face of the Channel. *Not. at ¶18.*

Notably, Young and Channel Red have not alleged any ownership interest in the sobriquet, SSSniperwolf. Instead, Young alleges that he entered into a verbal agreement with Shelesh “...to transfer all of their respective rights and assets relating to the formation, operation and management of the SSSNIPERWOLF YOUTUBE CHANNEL, and the use of Opposer's Mark, to Opposer.” *Not*. ¶29. But, Young conflates an alleged agreement to license and utilize the mark SSSniperwolf with ownership. A consent or license is not an assignment and relinquishment of rights. 2 [McCarthy On Trademarks And Unfair Competition § 18:79 \(5th ed. 2022\)](#) (“McCarthy”)) (“A consent agreement . . . is not an assignment because neither party is assigning any rights of ownership in their mark to the other.”). *Cf. Mystery Ranch, Ltd. v. Terminal Moraine Inc.*, 2022 USPQ2d 1151, at *34 (“It is one thing to permit another to use one's name as a mark, quite another to relinquish all ownership rights in one's name and agree to allow another to register one's name.”).

Simply because Shelesh allowed the Channel to use her stage name while she created and performed videos for the Channel, does not translate to consent for Young or Channel Red to own or register SSSniperwolf. This case is similar to [Hot Stuff Foods, LLC v. Mean Gene's Enterprises, Inc.](#), 468 F. Supp. 2d 1078, 1086 (D.S.D. 2006). There, Gene Okerlund, a professional wrestling announcer with the pseudonym “Mean Gene” provided a food company the exclusive right to use the “Mean Gene's” name, personality, picture, portrait likeness, voice and endorsement on and in connection with the advertisement, promotion and sale of certain food products. The company obtained a trademark for “Mean Gene's Burgers.” Thereafter, the company applied for a service mark registration for Mean Gene's Pizza. The USPTO “responded that if the name shown in the mark identifies a living individual, [the company] must submit a written consent from that individual authorizing the applicant to register the name ...”. *Id. at 1087*. The company abandoned the application. *Id. at 1088*. Later, Okerlund terminated his agreement with the company. *Id. at 1089*. Eventually, Okerlund started his own company, Mean Gene's Enterprises, with the intention of using the mark for food products, bars, and bowling alleys. *Id.* A lawsuit

quickly followed and, Okerlund requested that the Court cancel the registrations for “Mean Gene’s Burgers” held by the company’s successor.

There, the Court held that despite the company’s argument that “Mean Gene” was a persona, not a living person, and that Okerlund was merely an actor playing the role of a character that has come to be known as “Mean Gene,” the Court found that “Mean Gene” did identify a living individual. *Id. at 1091*. Then, the Court addressed whether Okerlund’s consent to use the Mean Gene moniker amounted to an implied consent to register the mark.

Consent to register must be distinguished from consent to use. There may very well be consent to use without any consent to register. And neither is consent to register sufficient under the statute unless it is a written consent as specified in the statute.

Id. (quoting *Reed v. Bakers Eng'g & Equip. Co.*, 100 U.S.P.Q. (BNA) ¶ 196 (Chief Examiner Jan. 27, 1954)). This case is similar in that Shelesh may have consented that Channel Red could use her pseudonym but, she never agreed **and certainly not in writing** that either Young or Channel Red would own or co-own her commercial alias. “Even if [the] record establishes consent to use [a] name as part of trade name, such consent does not qualify as written consent to register.” *Id. at 1092* (citing *In re New John Nissen Mannequins*, 227 U.S.P.Q. 569, 571 (1985)).

Indeed, Young has not presented anything in writing that demonstrates Shelesh’s consent to register her pseudonym “SSSniperWolf.” At best, Opposer alleges some consent to use “SSSniperwolf” for the Channel. Because Opposer cannot register the tradename with the USPTO without Shelesh’s consent under Section 2(c), 15 USC § 1052(c), the First Claim for Relief that the Application is void under 37 C.F.R. § 2.71(d) lacks merit and must be dismissed. Without Shelesh’s written consent, which was not alleged and does not exist, Opposer cannot own Shelesh’s pseudonym SSSniperwolf. The Notice of Opposition should be dismissed with prejudice.

B. Authority and Likelihood of Confusion.

Shelesh is the co-manager and 50% member in Channel Red. Under the Arizona Limited Liability Act, in the absence of a written Operating Agreement (which is the case here), [A.R.S. §29-3407\(C\)\(3\)\(a\)](#) provides that a **majority** of the managers is required to decide “[m]atters that are outside the ordinary course of the company’s activities and affairs but within the company’s purpose.” Likewise, under [§29-3407\(C\)\(3\)\(b\)](#), a **majority** of the managers is required to decide “[m]atters on which there exists a known difference among managers.” Here, both sections apply. Channel Red’s objection is outside the ordinary course of its business – operating the Channel. And, obviously, Channel Red’s claims and ownership rights are highly disputed between the managers. ***There is no majority.*** Accordingly, Young did not have the authority to cause Channel Red to file the Notice of Opposition. For that reason alone, this Tribunal should dismiss the Notice immediately.

Just as important though, there is no dispute that "SSSniperwolf" is Shelesh’s well-known, long-standing pseudonym, which she has used extensively over the last 13 years. Indeed, Young does not allege that he or Channel Red originated the commercial alias "SSSniperwolf." Instead, Young alleges, formulaically, without any factual support, is that Channel Red (a non-living person) is the owner of a living person’s pseudonym. *Not. at ¶4.* From that baseless allegation, Opposer leaps to another formulaic allegation: “[f]rom the time of the formation of Opposer through the present, Opposer has offered goods and services under Opposer’s Mark in interstate commerce, and Opposer’s use of Opposer’s Mark has been exclusive.” *Not. at ¶36.* Again, Opposer confuses Shelesh’s consent for Channel Red (her entity) to use the name with ownership over the name. Even taking Opposer’s alleged facts as true, at best Owner makes the case for some license to continue to use the tradename – not ownership over the same. Setting up, managing, and creating content for a YouTube channel does not confer ownership. The Opposer's activities do not override Shelesh’s long-standing and exclusive use of her commercial alias.

Fundamentally, Opposer attempts to claim that it has the ownership rights to “SSSniperWolf” and, therefore, Shelesh’s use of her pseudonym would cause public confusion. But, again, Opposer does not and cannot (especially without written consent) own Shelesh’s stage name, “SSSniperWolf.” As a matter of law, nobody can confuse Shelesh, under her pseudonym “SSSniperWolf” with a company, Channel Red, that merely collects the revenue from the Channel. This Tribunal should dismiss the Second Claim for Relief.

C. Fraud.

Notwithstanding Opposer’s lack of authority to bring any action or contest the Application, Opposer makes the baseless claim that Shelesh defrauded the USPTO by filing an application to trademark the well-known pseudonym "SSSniperwolf." Initially, it is a massive leap to suggest that a disagreement concerning the underlying facts is tantamount to fraud on this Tribunal. Were that the case, every contested application would be fraud. That cannot be possible.

That said, Shelesh’s statement in the Application, asserting that she believes she is the “owner of the [SSSniperWolf] mark sought to be registered... [and] believes applicant to be entitled to use such mark in commerce” is truthful and supported by substantial evidence of use and recognition. Again, a simple internet search reveals that the pseudonym “SSSniperWolf” is synonymous with Shelesh. Contrarily, nowhere does anything demonstrate that SSSniperWolf is owned by, refers to, or is even related to Channel Red. And, again, there is no written consent granted to Channel Red to register ownership over the mark. There is not even written consent for Channel Red to use the mark. Therefore, there was no intent to deceive or defraud this Tribunal. The Opposer's claim of fraud is unsupported and should be dismissed as it lacks any factual basis.

III. CONCLUSION.

Because Shelesh is a co-manager in Channel Red (as well as 50% owner), there is no majority that could have approved Channel Red’s alleged opposition to the Application.

For that reason alone, this Tribunal should immediately dismiss the Notice of Opposition. But even if this Tribunal ignores the binding Arizona statutes regarding LLC authority, the most basic internet search demonstrates that “SSSniperWolf” is Shelesh’s pseudonym. Indeed, Channel Red has not alleged that it created, originated, or had anything to do with generating the name “SSSniperWolf.” It simply states that Young helped build out the YouTube channel. That is not a sufficient basis to object to the Application. And, moreover, Channel Red did not (and cannot) present any writing that demonstrates Shelesh’s consent for Channel Red to register or own her pseudonym. This Tribunal should dismiss the Notice of Opposition with prejudice and award Shelesh her attorneys’ fees for being forced to respond.

Dated: August 1, 2024.

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CERTIFICATE OF SERVICE

I certify that on August 1, 2024, I caused a true and correct copy of the Motion to Dismiss Notice of Opposition to Channel Red, LLC to be served by email on Matthew Seror (mseror@buchalter.com), Glenn B. Hotchkiss (ghotchkiss@buchalter.com), and Buzzi L. Shindler (bshindler@buchalter.com).

By: /s/ Kelsey Posusta
Kelsey Posusta