

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

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

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Mailed: April 26, 2007

Cancellation No. 92045081

Money Corp.

v.

TTT Moneycorp Limited

Before Hohein, Grendel and Kuhlke,
Administrative Trademark Judges

By the Board:

TTT Moneycorp Limited ("respondent") is the owner of the following three registrations: (1) Registration No. 2396878 for the mark TTT MONEYCORP for "issuing travellers' cheques; commodity brokerage services; banking services and foreign currency services";¹ (2) Registration No. 2399042 for the mark MONEYCORP for "issuing travellers' cheques; commodity brokerage services; banking services and foreign currency services";² and (3) Registration No. 2463593 for the mark MONEYCORP for various printed materials including, but not limited to, books, newspapers, magazines, newsletters and educational and teaching materials, all

¹ Registered on October 24, 2000, based on Section 44(e).

relating to foreign exchange, currency and related financial matters.³

Money Corp. ("petitioner") has filed a petition to cancel respondent's involved registrations on the ground of priority of use and likelihood of confusion. Respondent has denied the salient allegations of the petition to cancel in its answer.

This case now comes up for consideration of respondent's motion (filed July 3, 2006) for partial summary judgment, and petitioner's cross-motion (filed August 24, 2006) for summary judgment, on petitioner's claim of priority of use and likelihood of confusion. The parties have fully briefed the issues.

For purposes of this order, we presume the parties' familiarity with the pleadings, the history of the proceeding and the arguments and evidence submitted with respect to each motion.

A party is entitled to summary judgment when it has demonstrated that there are no genuine issues as to any material facts, and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The evidence must be viewed in a light favorable to the nonmoving party, and all justifiable inferences are to be drawn in the nonmovant's

² Registered on October 31, 2000, based on Section 44(e); affidavit §8 accepted.

favor. *Opryland USA Inc. v. The Great American Music Show, Inc.*, 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992).

Upon careful consideration of the arguments and evidence presented by the parties, and drawing all inferences with respect to the motions in favor of the nonmoving party, we find that there are genuine issues of material fact with regard to petitioner's priority of use and likelihood of confusion claim which preclude disposition of this case by way of summary judgment in either party's favor. At a minimum, the parties have failed to show the absence of a genuine issue as to the relatedness of the parties' respective goods and services.⁴

Accordingly, respondent's motion for partial summary judgment on the priority of use and likelihood of confusion claim and petitioner's cross motion for summary judgment in its favor on that claim are both denied.⁵

³Registered on June 26, 2001, based on Section 44(e).

⁴The fact that we have identified one genuine issue of material fact as a sufficient basis for denying the parties' respective motions for summary judgment should not be construed as a finding that this issue necessarily is the only one which remains for trial.

⁵The parties should note that the evidence submitted in connection with a motion for summary judgment or opposition thereto is of record only for consideration of that motion. Any such evidence to be considered at final hearing must be properly introduced in evidence during the appropriate trial period. See *Levi Strauss & Co. v. R. Joseph Sportswear Inc.*, 28 USPQ2d 1464 (TTAB 1993); and *Pet Inc. v. Bassetti*, 219 USPQ 911 (TTAB 1983). Additionally, the issues for trial are not limited to those identified by the Board in explaining the denial of this motion for summary judgment.

The Board further notes, however, that respondent filed a Section 8 affidavit with respect to one of the subject registrations to this proceeding, i.e., Registration 2399042, whereby it deleted certain services identified in the original registration.⁶ Specifically, respondent deleted "issuing traveler's cheques, commodity brokerage services and banking services" from its originally issued registration. These deletions, however, were made without petitioner's written consent. In view thereof, and since the Section 8 affidavit was filed after the institution of this proceeding, respondent is allowed thirty days from the mailing date of this order to show cause why judgment should not be entered against it with respect to the services deleted from Registration No. 2399042.

Additionally, following a review of USPTO records, the Board notes that respondent has yet to file a Section 8 affidavit with respect to its Registration No. 2396878. The deadline for filing the aforementioned Section 8 affidavit, including the six-month grace period, was April 24, 2007.

In view thereof, respondent is also allowed until thirty days from the mailing date of this order to inform the Board whether it filed a timely Section 8 affidavit or, if it did not, to show cause why its failure to file a

⁶The Section 8 affidavit was filed on October 18, 2006 and was accepted by the Post Registration Branch of the PTO on March 8, 2007.

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timely Section 8 affidavit should not be deemed to be the equivalent of a cancellation by request of respondent without the consent of petitioner, and should not result in entry of judgment against respondent with respect to its Registration No. 2396878 as provided by Trademark Rule 2.134(a). In the absence of a showing of good and sufficient cause, judgment may be entered against respondent with respect to this registration. See Trademark Rule 2.134(b).

Proceedings herein remain suspended. Upon resumption thereof, trial dates, beginning with petitioner's trial period, will be reset.
