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

Proceeding	92050860
Party	Plaintiff Trans World International, Inc.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

TRANS WORLD INTERNATIONAL, INC.,)	
)	
Petitioner,)	
)	
vs.)	Cancellation No. 92050860
)	
AMERICAN STRONGMAN CORPORATION,)	
)	
Registrant.)	
)	

PETITIONER’S RESPONSE TO REGISTRANT’S MOTION FOR JUDGMENT

Petitioner, Trans World International, Inc., hereby opposes Registrant’s Motion for Judgment for Plaintiff’s Failure to Prove Case Pursuant to 37 CFR § 2.132(b).

Registrant’s motion overlooks one very important fact. Petitioner’s Petition for Cancellation, filed April 23, 2009 included a TESS copy of Petitioner’s Trademark Registration No. 2484106. This registration forms the basis of Petitioner’s case. Petitioner is the owner of the mark WORLD’S STRONGEST MAN, and has registered this mark on the Principal Register for entertainment in the nature of on-going television programs in the field of sports competitions. Registrant has registered the mark AMERICA’S STRONGEST MAN for sports competitions and entertainment on the Supplemental Register. In accordance with Section 7, 15 U.S.C. § 1057, Petitioner’s registration is prima facie evidence of the validity of the registered mark and of the registration of the mark, of Petitioner’s ownership of the mark, and of Petitioner’s

exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the certificate. Registrant has submitted no evidence that this registration is invalid, nor has otherwise challenged Petitioner's trademark rights.

The record further comprises the prosecution history of Registrant's Trademark Application Serial No. 77387835, which became Registration No. 3522878. The prosecution history shows that Petitioner's Registration No. 2484106 was cited by the Examining Attorney in an Office Action dated May 13, 2008, and that the Examining Attorney refused registration of Registrant's mark AMERICA'S STRONGEST MAN under section 2(d) as being confusingly similar to Petitioner's mark WORLD'S STRONGEST MAN. This Office Action, which is of record herein, presents a well reasoned judgment of the likelihood of confusion between the two marks.

Registrant responded to the Office Action on September 4, 2008 by amending the application to one seeking registration on the Supplemental Register, but did not otherwise address the section 2(d) refusal to register. Despite Registrant's filing of a nonresponsive amendment, the application was approved for registration on the Supplemental Register, and this cancellation proceeding ensued.

Twice now, Registrant has had Petitioner's Trademark Registration No. 2484106 cited against its mark, and twice now, Registrant has attempted to avoid any confrontation of the issue of likelihood of confusion between its mark and Petitioner's mark.

Petitioner asserts that it has met its burden of going forward by properly submitting into the record its Trademark Registration No. 2484106, along with the

prosecution history of Registrant's registration. Registrant has not addressed the specific issues of this case. Registrant seems to be arguing in its motion that any case in which the Petitioner only relies upon its registration should be subject to dismissal under 37 C.F.R. 2.132(b). This is not the case. See, e.g., *Merker Counter Co., Inc. v. Central Counter Co.*, 310 F.2d 746, 135 USPQ 433 (CCPA 1962). The similarities of the marks along with the extensive overlap in the services of the two marks indicate that Petitioner has met its prima facie burden of going forward. Registrant's statement in its motion that Petitioner "has failed to offer any evidence whatsoever that would make out a prima facie case" is simply false and is only intended to mislead this Board.

Therefore, Petitioner requests that Registrant's Motion be denied.



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September 13, 2010

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Petitioner's Resposne to Registrant's Motion for Judgment* was served on Sepehr Daghighian, 433 North Camden Drive, Fourth Floor, Beverly Hills, California 90210, attorney for Registrant, this 13th day of September, 2010.


