

**This Order 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
General Contact Number: 571-272-8500

mbm

Mailed: January 19, 2017

Cancellation No. 92055379

Larry Reynolds aka L.J. Reynolds

v.

Sandra Banks

Before Taylor, Bergsman, and Pologeorgis,
Administrative Trademark Judges.

By the Board:

This proceeding now comes before the Board for consideration of Sandra Bank's ("Respondent") response (filed October 20, 2016) to the Board's September 30, 2016 show cause order and Larry Reynolds' ("Petitioner") response (filed November 1, 2016) to the Board's October 27, 2016 order.

Background

Respondent is the owner of the registered mark THE DRAMATICS, in standard characters, for "audio and video recordings featuring music and artistic performances; Digital music downloadable from the Internet" in International Class

9 and “entertainment in the nature of live performances by a musical group” in International Class 41.¹

By way of his amended petition to cancel filed on April 24, 2012, Petitioner seeks to cancel Respondent’s subject registration on the following grounds: (1) likelihood of confusion pursuant to Section 2(d) of the Trademark Act, and (2) fraud.

On May 31, 2012, Respondent filed a motion to dismiss these proceedings for, in part, Petitioner’s failure to join indispensable parties.² Respondent contends that the common law rights in THE DRAMATICS mark are owned by “a Michigan limited liability company of which Petitioner, Willie Ford and Ronald Banks are members.” 8 TTABVue at 2. Respondent then argued that the claims must be dismissed because Petitioner did not join the “co-owners” of the mark, namely, Willie Ford and the Estate of Ronald Banks. *Id.* Respondent claims that she is an heir to the Estate of Ronald Banks and, therefore, Respondent would be a “co-owner of the common-law trademark with the other two limited liability members, Petitioner and Willie Ford.” *Id.* at 6 n.1. Respondent argues that she “would refuse to be joined as petitioner against herself” and that co-owners of a trademark may not bring a cancellation proceeding against one another. *Id.*

As a result of Respondent’s arguments and allegations in her May 31, 2012 motion to dismiss, the Board issued an order on September 30, 2016 to show cause why

¹ Registration No. 4107421, registered on March 6, 2012, claiming January 1, 1969 as both the date of first use and the date of first use in commerce for both the International Class 9 goods and the International Class 42 services.

² Proceedings were also suspended for civil action on May 31, 2012.

judgment should not be entered against her based on her apparent lack of exclusive rights in the mark THE DRAMATICS (*i.e.*, that Respondent is not the sole owner of the registered mark and, therefore, the application that she filed is void *ab initio*). The Board's September 30, 2016 order required her to state: (1) whether she alleges that she is the sole and exclusive owner of the rights in the mark THE DRAMATICS; and (2) to the extent Respondent does not allege she is the sole and exclusive owner of the rights in the mark THE DRAMATICS, Respondent must provide her basis for maintaining that she is entitled to a registration for the mark THE DRAMATICS. 44 TTABVUE at 14.

Respondent responded to the Board's September 30, 2016 order on October 20, 2016. In the response, Respondent did not directly address either of the points specifically required by the Board's September 30, 2016 order. Instead, Respondent alleged that the parties had reached an agreement that "does not give ownership to [Petitioner] but allows him to perform using the name 'the Dramatics.'"³ 45 TTABVUE at 1. Respondent attached a February 12, 2015 order from the United States District Court of Eastern District of Michigan⁴ denying a motion for summary judgment in which the court notes that the issue of whether Respondent had the

³ Respondent requests that if her registration is cancelled, Petitioner's pending application for THE DRAMATICS also be refused registration. Any pending application Petitioner may have is not at issue in this proceeding and the Board does not have jurisdiction over any pending trademark applications Petitioner may have. *See Home Juice Com. v. Runglin Companies Inc.*, 231 USPQ 897, 898-99 n.7 (TTAB 1986). In view thereof, Respondent's request will be given no consideration.

⁴ *Larry Reynolds, a/k/a L.J. Reynolds, and Larry Demps v. Sandra Banks, Willie Ford, et al.*, 2:12-cv-11664-PDB-MKM.

rights necessary to register THE DRAMATICS mark was not adequately briefed. 45 TTABVUE at 14. Respondent also attached a copy of the signed settlement proposal, dated October 11, 2016. 45 TTABVUE at 16-20. The signed settlement proposal does not provide for the disposition of this proceeding or of Respondent's registration. *Id.*

Accordingly, the Board issued an order on October 27, 2016, allowing Petitioner time in which to file a response to Respondent's October 20, 2016 response, advising the Board how Petitioner wished to proceed in light of the settlement. 46 TTABVUE at 2. Petitioner responded on November 1, 2016 by stating that he maintained that Respondent's subject registration should be cancelled. 47 TTABVUE.

Decision

As set forth in the Board's September 30, 2016 order, only the owner of a mark may file a use-based application for registration of the mark. *See* 15 U.S.C. § 1051(a). "[If] the [person] filing the application is not the owner of the mark as of the filing date, the application is void *ab initio*." *Great Seats, Ltd. v. Great Seats, Inc.*, 84 USPQ2d 1235, 1239 (TTAB 2007).

A trademark registration may be cancelled "if a petitioner can show the existence of the registration is inimical to an *equal* or superior right to use the same or similar term in connection with goods or services which are similar to or commercially related to those of respondent." *Girard Polly-Pig, Inc. v. Polly Pig by Knapp, Inc.*, 217 USPQ 1338, 1344 (TTAB 1983) (emphasis added) (granting petition to cancel respondent's registration of POLLY-PIG where petitioner was found to have equal rights in the mark). According to Respondent's own allegations, she is, at most, a co-owner of the

mark THE DRAMATICS with Petitioner. As such, she is not entitled to the registration at issue and her application was void *ab initio*.

Inasmuch as Respondent failed to respond substantively to the Board's September 30, 2016 order to show cause, and inasmuch as Respondent has acknowledged that she is not the exclusive owner of the rights in the subject registered mark THE DRAMATICS, judgment is hereby entered against Respondent.

The petition to cancel is accordingly **GRANTED** and Registration No. 4107421 will be cancelled in due course by the Commissioner for Trademarks.