

ESTTA Tracking number: **ESTTA836646**

Filing date: **08/01/2017**

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

Proceeding	92065178
Party	Defendant The General Conference Corporation of Seventh-day Adventists
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Date	08/01/2017
Attachments	Reply Brief in Support of Motion to Dismiss 4825-4466-7212 v.2.pdf(143007 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Philanthropist.com, Inc.,)	
)	
Petitioner)	
)	
v.)	Cancellation No. 92065178 (Parent)
)	Cancellation No. 92065255
)	
The General Conference Corporation)	
of Seventh-day Adventists,)	
)	
Registrant)	

REGISTRANT’S REPLY BRIEF
IN SUPPORT OF ITS MOTION TO DISMISS
PETITIONER’S AMENDED PETITION FOR CANCELLATION

Pursuant to TBMP §502.02(b), Registrant The General Conference Corporation of Seventh-day Adventists (“Registrant”) hereby submits this reply brief in support of its Motion to Dismiss (“Registrant’s Motion”) the Amended Petitions for Cancellation (collectively, the “Amended Petition”) filed by Petitioner Philanthropist.com, Inc. (“Petitioner”) in Cancellation No. 92065178 (the ‘178 Proceeding) and Cancellation No. 92065255 (the ‘255 Proceeding and, collectively, the “Consolidated Proceedings”).¹

I. INTRODUCTION

Petitioner has failed to show why its Amended Petition should not be dismissed. The Amended Petition was filed late and fails to comply with either the Board’s rules or the Federal Rules of Civil Procedure for the format and substance of pleadings, since it is primarily in the form of a legal brief rather than a complaint or pleading.

¹ As set forth in Registrant’s Opposition to Petitioner’s Motion for Default Judgment in the ‘255 Proceeding (11 TTABVUE), Registrant understands and intends its original Motion to Dismiss and the present Reply to be directed to dismissal of both Consolidated Proceedings. Based upon its understanding that the proceedings had been consolidated, the original Motion to Dismiss was filed in the ‘178 Proceeding (10 TTABVUE), the designated parent proceeding. However, for the avoidance of doubt, Registrant intends to file a copy of this Reply in both proceedings.

Furthermore, even disregarding these failings, the Amended Petition still fails to set forth a plausible ground for standing. The prior UDRP dispute between the parties has concluded and no additional disputes are pending or have been threatened. Petitioner's argument that the value of its domain name will be damaged by the continued registration of Registrant's U.S. Reg. Nos. 1,176,153 and 1,218,657 is mere conjecture and is not supported by any facts. Finally, Petitioner has failed to allege that it is using or needs to use the term ADVENTIST in connection with its business or in connection with any goods or services similar to those covered by the subject registrations.

Therefore, the Board should grant this Motion and dismiss the Amended Petition with prejudice.

II. THE AMENDED PETITION SHOULD BE DISMISSED ON PROCEDURAL GROUNDS

Although Petitioner has failed to allege facts that would establish its standing, the Amended Petition should be dismissed on procedural grounds without any further analysis of the substantive issues of law. Petitioner attempts to sweep its failure to comply with the Board's rules under the rug by only briefly addressing these issues at the end of its brief, and by characterizing Registrant's arguments as "frivolous" and "preposterous." However, Petitioner's failure to meet the deadline set by the Board and its willful refusal to follow the clear rules laid out by the Board for the form and substance of pleadings clearly justify dismissal of this action.

First, Petitioner has failed to justify its failure to comply with the deadline set by the Board in its May 1, 2017 Order, or to seek appropriate relief for its lack of compliance with the deadline. Petitioner merely states that "Pursuant to the Board's May 1, 2017 order...it is Petitioner's understanding that its Amended Petition was due on June 3, 2017." Petitioner's Brief, at 5. However, the May 1, 2017 Order clearly stated that "Petitioner is allowed until thirty

days from the mailing date of this order to file amended petitions...failing which the original petitions will be dismissed with prejudice.” Order, at 13 (emphasis in original).

Furthermore, even if the Board were inclined to forgive Petitioner’s failure to submit a timely pleading, there is absolutely no justification for Petitioner’s failure to comply with the Board’s rules for the form and substance of pleadings. Petitioner characterizes Registrant’s position that Petitioner should actually be required to submit pleadings that comply with the Board’s rules and provide Registrant with fair notice of the allegations against it as “mind-blowing.” 11 TTABVUE at 5. However, contrary to Petitioner’s mischaracterization of Registrant’s arguments, the main problem with the Amended Petition is not that it is overly long or contains citations to case law, but that the first five pages of the Amended Petition – the section purportedly relating to standing – are not in the form of simple, concise, numbered statements of fact limited to a single set of circumstances as required by Fed. R. Civ. P. 8(d) and 10(b)² and TBMP §309.03(a)(2).

Instead, they are in the form of unnumbered, lengthy paragraphs which indiscriminately combine factual allegations, conjecture, exhibits, and legal argument. See 9 TTABVUE 1-5. This makes it impossible for Registrant to respond with simple admissions or denials as required by Fed. R. Civ. P. 8(b) and alone provides sufficient grounds for dismissal. See P’s Motion, 10 TTABVUE at 6, and cases cited therein; see also *Michaelis v. Nebraska State Bar Ass’n*, 717 F.2d 437, 439 (8th Cir. 1983) (“The style and prolixity of these pleadings would have made an orderly trial impossible. [The plaintiff’s] deliberate persistence in refusing to conform his pleadings to the requirements of Rule 8 justified dismissal of the complaints with prejudice.”)

In its Brief, Petitioner now attempts to characterize the first five pages of the Amended Petition as a mere “introduction” or preamble before the numbered allegations of the complaint

² While Petitioner suggests that the Federal Rules have no “formatting” requirements, 11 TTABVUE at 5, Fed. R. Civ. P. 10(b) explicitly provides that “[a] Party must state its claims or defenses in numbered paragraphs.”

begin. 11 TTABVUE at 5. However, if this is the case, and the first five pages can be disregarded, then the Amended Petition does not contain any allegations of standing, as the numbered allegations of the Amended Petition merely set forth Petitioner's argument that the ADVENTIST Mark is generic. Therefore, even accepting Petitioner's argument in the alternative, the Petition clearly must still be dismissed for failure to state a claim.

III. PETITIONER HAS FAILED TO ALLEGE STANDING TO BRING THIS PROCEEDING

Furthermore, even if the Board disregards Petitioner's failure to follow the Board's rules, and allows the legal arguments on the first five pages of the Amended Petitioner to stand as part of the complaint, the Amended Petition still does not sufficient plead Petitioner's standing to cancel Petitioner's registrations.

As set forth in the Motion to Dismiss, in order to establish standing, Petitioner must demonstrate both "a real interest in the proceedings as well as a 'reasonable' basis for [its] belief of damage." *Ritchie v. Simpson*, 170 F.3d 1092, 1095 (Fed. Cir. 1999). In order to establish a "real interest," Petitioner must plead and prove that it has a "direct and personal stake" in the outcome herein and is more than a "mere intermeddler." *Id.* "A party does not gain standing before the Board by virtue of the mere subjective 'belief that a trademark violates rights under Trademark Act [Section] 14'...[T]he belief in damage resulting from registration must be *objectively* reasonable." *NSM Resources Corp. and Huck Doll LLC v. Microsoft Corp.*, 113 U.S.P.Q.2d 1029, 1033 (TTAB 2014).

Petitioner claims that the "existence of another dispute between the parties involving the same registration" is sufficient to establish Petitioner's standing. 11 TTABVUE at 2. However, the cases cited do not stand for this proposition. In the first case, *Anthony's Pizza & Pasta International, Inc. v. Anthony's Pizza Holding Company, Inc.*, Opposition No. 91171509 and Cancellation No. 92045956 (T.T.A.B. 2009), the Board found that the defendant had standing to

assert a counterclaim against the plaintiff by virtue of being a defendant in the pending dispute. In *Texas Department of Transportation v. Richard Tucker*, Cancellation Nos. 92030882 and Opposition No. 91165417 (T.T.A.B. 2010), the Board found plaintiff's standing based upon its ownership of asserted registrations and the suspension of a subsequently filed application based upon likelihood of confusion with the mark at issue. There is no support for Petitioner's position that a dispute which has already been resolved, and for which the appeal deadline has passed, gives one party standing to challenge the other party's registrations until the end of time. The fact that Registrant asserted its registrations in another proceeding which has now been resolved does not give Petitioner any "reasonable basis" for believing that it will be damaged in the future by the continued existence of these registrations.

Petitioner also claims that it has made "ample showing that it may be damaged through loss of sales and profits." This argument, like the allegations in the Amended Petition, is based on mere conclusory statements without any supporting facts. While a petitioner does not bear the burden of proving its case in a petition for cancellation, the Board is not required to accept conclusory legal statements or unwarranted factual inferences as true. *In re Bill of Lading Transmission and Processing System Patent Lit.*, 681 F.3d 1323, 103 USPQ2d 1045, 1051 (Fed. Cir. 2012).

Petitioner has failed to point to any specific, fact-based assertions which support its purported "ample showing" of likely damage. Petitioner has merely alleged, in the most conclusory manner possible, that the value of the domain name "has depreciated" and that Petitioner will not be able to "realize a reasonable return on its investment." Amended Petition at 4. However, Petitioner has not made any factual allegations to support these claims, such as that it has tried and failed to sell the domain name, or that the values of other domain names have depreciated under similar circumstances. Nor has it pled any facts to support that the petitioned

registrations, or their continued existence on the register, is in any way related to this alleged “harm.”

Petitioner’s argument that the value of the domain name “has depreciated” as a result of it winning a UDRP challenge is also counter-intuitive. If Petitioner is going to argue to the contrary, it needs to have at least some type of factual basis to support its position.

Finally, Registrant again notes that Petitioner has entirely failed to address the Board’s mandate that in order to demonstrate standing to cancel Registrant’s registrations, Petitioner must allege that it offers the same or similar goods or services as Registrant; that it has a commercial need to use the ADVENTIST for business purposes that include or encompass Registrant’s goods and services; or that it needs to use the term ADVENTIST descriptively in order to carry out its business as a domainer. Order, at 7. Petitioner’s Brief does not explain how the allegations in the Amended Petition satisfy any of these requirements.

In conclusion, Petitioner has not shown that it has an objectively reasonable basis for believing that it will be damaged by the continued registration of Registrant’s ADVENTIST Mark, or that it has a “direct and personal stake” in the continued registration of this mark.

Therefore, the Amended Petition must be dismissed for lack of standing. Furthermore, the dismissal of the Amended Petition should be with prejudice. There is no reason to keep giving Petitioner additional chances to establish standing; the Board’s May 1, 2017 Order already explained what Petitioner would have to allege in order to show standing, and it is abundantly clear that Petitioner has no basis for seeking to cancel Registrant’s registrations other than its spite at Registrant’s prior filing of a UDRP complaint.

VI. CONCLUSION

For the reasons set forth above, Registrant respectfully requests that the Board dismiss the Amended Petition with prejudice.

Respectfully submitted,

By:



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Date: August 1, 2017

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing REGISTRANT'S REPLY BRIEF IN SUPPORT OF ITS MOTION TO DISMISS PETITIONER'S AMENDED PETITION FOR CANCELLATION was served this 1st day of August, 2017, by e-mail only, upon:

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