ESTTA Tracking number: **ESTTA873718**

Filing date: **01/26/2018**

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

Proceeding	92067481
Party	Plaintiff RLP Ventures, LLC
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RLP Ventures, LLC Petitioner, v. Life Line, Inc. (dba 1st Choice Women's Health Center) Registrant.	Cancellation No. 92067481 Mark: MOSAIC VIRGINIA Filed: December 10, 2014 Published: August 25, 2015 Registered: November 10, 2015 Registration No. 4,849,517

PETITIONER'S BRIEF IN OPPOSITION TO REGISTRANT'S MOTION TO DISMISS

Pursuant to Fed. R. Civ. P. Rule 12(b)(6) and TBMP §503, Petitioner RLP Ventures, LLC ("Petitioner") submits its brief in opposition to Registrant Life Line, Inc.'s (dba 1st Choice Women's Health Center) ("Registrant") Motion to Dismiss Petitioner's Petition to Cancel ("Petition"). For the reasons specified below, Registrant's Motion to Dismiss ("Motion") should be denied.

I. INTRODUCCTION

Registrant seeks to dismiss the Petition based on a claim that Petitioner has failed to appropriately plead the count alleged in the Petition. Registrant's Motion must fail as it is both procedurally and substantively defective.

Indeed, Petitioner has sufficiently pleaded the elements off of its claim for violations of Section 2(d) of the Lanham Act in the Petition. Petitioner has alleged facts establishing that 1) Petitioner has standing and 2) Petitioner has valid grounds to cancel the registration. While Petitioner's Petition is far more detailed, these allegations alone meet the pleading requirements under the TTAB and the Federal Rules. Registrant's Motion should be denied.

II. SUMMARY OF FACTS ALLEGED IN THE PETITION

Petitioner has alleged the following facts in its Petition-which must all be presumed true for the purposes of Registrant's Motion-and which on their face demonstrate why Registrant's Motion must fail. Petitioner incorporates all of the allegations from the Petition to the extent not referenced herein. (See Petition generally). The marks at issue are as follows:

MOSAEC	MOSAIC VIRGINIA
Petitioner's Mark	Registrant's Mark

Petitioner has specifically pleaded that its word mark, MOSAEC, was in use in interstate commerce for multiple goods and services long before any use of Registrant's marks (including some services that are identical to certain of Registrant's services and other goods and services that are related to Registrant's goods and services). Petitioner also pleaded that it obtained federal registration in International Class 42 as well as acquired common law rights for its mark in International Classes 9 and 36 long before Registrant adopted and began using its mark. (Petition ¶¶ 1–6).

As pleaded in the Petition, registration of Registrant's mark is likely to damage Petitioner. (Petition ¶¶ 11-14, 16-17). Thus, Petitioner filed its Petition to Cancel alleging claims under Section 2(d) of the Lanham Act for likelihood of confusion. (See Petition generally).

III. ARGUMENT

A. Standard for Motion to Dismiss for Failure to State a Claim

To withstand Registrant's Motion, Petitioner need only allege sufficient facts that, if proven, would allow the Board to conclude or draw a reasonable inference that (1) the plaintiff has standing to maintain the proceeding, and (2) a valid ground exists for opposing or cancelling

the mark. Doyle v. Al Johnson's Swedish Restaurant & Butik Inc., 101 USPQ2d 1780 (TTAB 2012) (citing Young v. AGB Corp., 152 F.3d 1377, 47 USPQ2d 1752, 1754 (Fed. Cir. 1998)); TBMP §503.02 (2014). This standard requires Petitioner to plead "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face . . . enough to raise a right to relief above the speculative level.'" Ashcroft v. Iqbal, 556 U.S. 662, 668, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 570 (2007)). The Petition must be examined in its entirety, construing the allegations so as to do justice as required by Fed. R. Civ. P. 8(e). IdeasOne Inc. v. Nationwide Better Health, 89 USPQ2d 1952, 1953 (TTAB 2009). All of Petitioner's well-pleaded allegations must be accepted as true, and the Petition must be construed in the light most favorable to Petitioner. See Advanced Cardiovascular Systems Inc. v. SciMed Life Systems Inc., 988 F.2d 1157, 26 USPQ2d 1038 (Fed. Cir. 1993).

To satisfy standing, a Petitioner need only plead sufficient facts to show "real interest" and a "reasonable basis" for its belief that it would suffer damages if the mark is registered. Ritchie v. Simpson, 170 F.3d 1092, 50 USPQ2d 1023, 1025 (Fed. Cir. 1999). A "real interest" and "reasonable basis" can be adequately pleaded by showing 1) ownership of a current registration and 2) possible damage to the registration, such as by a claim of likelihood of confusion—that is not wholly without merit. Cunningham v. Laser Golf Corp., 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000); Barbara's Bakery Inc. v. Landesman, 82 USPQ2d 1283, 1285 (TTAB 2007). For the reasons explained below, Petitioner has pleaded both a "real interest" and a "reasonable basis" for its claims.

In the opposition context, to adequately plead a valid ground for opposition an opposer must allege an appropriate statutory ground that negates an applicant's right to registration. Young, 152 F.3d at 1380. While this requires more than simply referencing the specific section

of the Trademark Act, see Demon International LC v. Lynch, 86 USPQ2d 1058, 1059–1060 (TTAB 2008), an opposer need only set forth the elements to a statutory ground with enough facts to constitute a plausible claim. See Petroleos Mexicanos v. Intermix SA, 97 USPQ2d 1403, 1405–1406 (TTAB 2010) (holding petitioner sufficiently pleaded the elements of Section 2(a) and 2(d) claims). Petitioner in this instance has pleaded sufficient facts to constitute a plausible claim.

Whether Petitioner has proven its allegations or not is irrelevant to determining whether it has sufficiently pleaded it's allegation to survive a motion to dismiss. Advanced Cardiovascular Systems, 26 USPQ2d at 1041. For the reasons explained below, Petitioner has clearly pleaded its claims sufficiently.

B. Petitioner's Claim is Sufficient to Avoid Dismissal Under Rule 12(b)(6)

Registrant bases its Motion solely on the sufficiency of Petitioner's pleaded claims; it does not appear to have argued that the Petitioner lacks standing. (See, e.g., Motion, Argument). Regardless, Petitioner has adequately pleaded standing, as it has alleged ownership of the mark and of a current registration and applications for its MOSAEC mark as well as damage to this mark based upon continued registration of Registrant's marks under Section 2(d) of the Lanham Act. (See Petition ¶¶ 1–6, 9–17; Barbara's Bakery Inc., 82 USPQ2d at 1285). By establishing standing with respect to one pleaded ground for opposition, Petitioner has the right to assert any other ground that also has a reasonable basis in fact. See Enbridge Inc. v. Excelerate Energy LP, 92 USPQ2d 1537, 1543 n.10 (TTAB 2009). Thus, the only remaining issue is whether Petitioner has sufficiently pleaded the allegations in its Petition, and here without question, it has.

1. Petitioner's Section 2(d) Claim is Legally Sufficient

Petitioner's claim in the Petition is that Registrant's mark violates Section 2(d) of the Lanham Act and is likely to cause confusion, mistake or deception of the public. At this stage, Petitioner is not required to prove a likelihood of confusion, but only plead sufficient facts to plausibly state the grounds for a claim of a likelihood of confusion. See Petroleos Mexicanos, 97 USPQ2d at 1406–1408. For a Section 2(d) claim, Petitioner must allege two elements, 1) that its mark has priority over the Registrant's mark and therefore has superior rights to it, and 2) that the Registrant's mark is likely to cause confusion with the Petitioner's mark. See id.; London Regional Transport v. The William A. Berdan and Edward C. Goetz, III Partnership, 2006 WL 2035240 at *10 (TTAB 2006).

Petitioner has pleaded ownership of a federal registration for its mark in International Class 42 (See Petition ¶¶ 6) and the Petition references applications in International Class 9 and 36. In addition, the TTAB's electronic filing includes a cover page that references the Petitioner's mark as well as links to the underlying registration and applications. As it relates to International Class 36, the TSDR record includes specimens that clearly reference use of the Petitioner's mark for over 15 years as well as for Class 36 services. Because Petitioner's pleaded registration is properly made of record, priority is not an issue in this case as to the mark and the goods and services covered by the registration. American Throwing Co. v. Famous Bathrobe Co., 250 F.2d 377, 379-80, 116 USPQ 156 (CCPA 1957); King Candy Co, Inc. v. Eunice King's Kitchen, Inc., 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974); Nike, Inc. v. Palm Beach Crossfit Inc. d/b/a Crossfit CityPlace, 116 USPQ2d 1025 (TTAB 2015), 8. Petitioner also has alleged common law rights to its mark that are prior to any dates of use of Registrant's marks by Registrant. (See Petition ¶¶ 2, 6).

Likewise, Petitioner has pleaded a likelihood of confusion adequately, by alleging that:

- Petitioner's Mark and the Registrant's Mark are confusingly similar in sound, appearance and commercial impression and there is a direct overlap between the Petitioner's charitable fundraising services and the Registrant's Service, such that the services are identical and/or closely related. Registrant's Mark incorporates MOSAIC which is confusingly similar in sound, appearance and commercial impression to the Petitioner's Mark. Note that the only difference in the Registrant's use of the word MOSAIC is the "I" in the MOSAIC portion of Registrant's Mark. Furthermore, the addition of the phrase "VIRGINIA" is unlikely to dispel confusion because the dominant feature of the first term of the Registrant's Mark is MOSAIC. In addition, on the Registrant's website, the Registrant refers to its goods and services solely using the term "MOSAIC".
- Registrant's Mark in Class 36 is likely to cause confusion, mistake or to deceive under § 2(d) of the Lanham Act.
- Petitioner will be damaged by Registrant's continued registration of the mark MOSAIC VIRIGINIA because the registration will block registration of Petitioner's Mark MOSAEC, which Petitioner has applied for in International Class 36. Therefore, U.S. Registration No. 4,849,517 is a source of damage and injury to Petitioner.

(Petition ¶¶ 9, 15, 17). Particularly given the visual similarity of the marks, Petitioner has pleaded a sufficient claim for a likelihood of confusion to survive a motion to dismiss.

Registrant contends that the Petitioner's claim should fail as a matter of law, because Petitioner failed to plead priority. (See Motion, Argument). This reflects a misunderstanding of the rules regarding notice pleading.

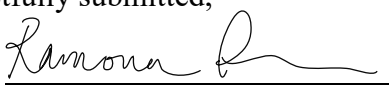
Registrant has confused the requirements for pleading . . . with the requirements for proving . . .at trial or on summary judgment. As is often stated, the purpose of notice pleading is to obviate the need to allege particular 'magic words.'" Fair Indigo LLC, 85 U.S.P.Q.2d 1536 (T.T.A.B. 2007) (denying a motion to dismiss for lack of priority in a 2(d) claim). The Registrant makes the same mistake as the applicant in Fair Indigo.

IV. CONCLUSION

For the reasons specified above, Petitioner has shown that it has standing and has pleaded a legally sufficient claim for the allegations raised in its Petition. Petitioner respectfully prays that the Board deny Registrant's Motion and promptly resume the cancellation proceeding.

Respectfully submitted,

Dated: January 26, 2018

By: 

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PETITIONER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the attached PETITIONER'S BRIEF IN OPPOSITION TO REGISTRANT'S MOTION TO DISMISS was served on the Attorney for the Registrant on the date listed below via email:

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Dated: January 26, 2018 By: Ramona Prioleau