Mailed: October 6, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Zhejiang Import & Export Pet Food and Product Industry Association

v.

Jinchun Ma

Cancellation No. 92076309

David Silver of Bayramoglu Law Offices LLC,
for Zhejiang Import & Export Pet Food and Product Industry Association.

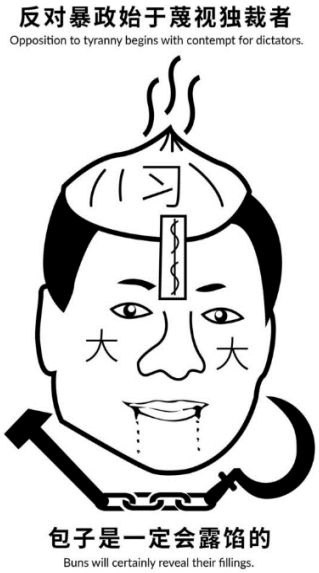
Jinchun Ma, pro se.

Before English, Elgin, and Bradley,
Administrative Trademark Judges.

Opinion by Elgin, Administrative Trademark Judge:

Respondent Jinchun Ma, appearing pro se, owns a registration for the composite mark shown below on the Principal Register in connection with "Pet accessories, namely, canvas pouches for holding disposable bags to place pet waste in; Pet accessories, namely, specially designed canvas bags attached to animal leashes for

holding small items such as keys, credit cards, money or disposable bags for disposing of pet waste" in International Class 18.[1]



The mark is described as:

> [T]he head of a man wearing a steamed stuffed bun on top of his head. There is also a rectangular banner containing two "$" symbols on his forehead. There is a Chinese symbol on each side of the face, there is a fang on each side of the mouth from which is dripping blood. Under the head there are a hammer on the left and a sickle on the right, and a chain link between the hammer and the sickle. Two sentences of Chinese on the upper and lower of the picture are the translations of the corresponding English sentences "OPPOSITION TO TYRANNY BEGINS WITH CONTEMPT FOR DICTATORS" at the top, and "BUNS

[1] Reg. No. 5795348 issued on July 2, 2019 based upon Respondent's claim of first use anywhere and first use in commerce since at least as early as April 3, 2019 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a). A declaration of continuing use under Trademark Act Section 8, 15 U.S.C. § 1058, has been filed. On September 20, 2022, Petitioner filed its first petition for reexamination of the registration for non-use under Trademark Rule 2.91, 37 C.F.R. § 2.91. After Petitioner refiled the petition several times, the UPSTO instituted a reexamination proceeding on April 4, 2023. *See* Trademark Act Section 16B, 15 U.S.C. § 1066b. On April 18, 2024, the USPTO determined that Respondent had demonstrated use of the mark in commerce as of the relevant date for the goods listed above, but partially cancelled the registration as to certain other goods.

WILL CERTAINLY REVEAL THEIR FILLINGS." on the bottom.

The non-Latin characters in the mark that transliterate to "fan dui bao zheng shi yu mie shi du cai zhe," "da," and "bao zi shi yi ding hui lou xian de" are identified as meaning "opposition to tyranny begins with disdain for dictators," "big," and "buns will certainly reveal their fillings" in English. The registration states that the non-Latin characters that transliterate to "xi" are claimed to have no meaning in a foreign language,[2] and the name, portrait, and/or signature shown in the mark does not identify a particular living individual.

Petitioner Zhejiang Import & Export Pet Food and Product Industry Association filed a Petition to Cancel the subject registration. Petitioner asserts it was established as a Chinese "trade organization for various pet food and pet products that are manufactured in China and sold internationally, including to the United States."[3] The operative Second Amended Petition to Cancel alleges six claims, all of which Petitioner maintains in its main brief:

(1) non-use, pursuant to Trademark Act Section 1(a), 15 U.S.C. § 1051(a);

(2) the mark falsely suggests a connection with a person or institution, pursuant to Trademark Act Section 2(a), 15 U.S.C. § 1052(a);

---

[2] The term "xi" is not included in the description of the mark, but Respondent admitted that the mark "has the phrase 习大大 ('Xi Da Da') on the face of the person in Registrant's Mark, with '习' [xi] being on the person's head and '大' [da] on each cheek." Respondent's Response to Request for Admission No. 1 (50 TTABVUE 27).

Citations in this opinion to the briefs and other materials in the case docket refer to TTABVUE, the Board's online docketing system. *See In re Integra Biosciences Corp.*, No. 87484450, 2022 TTAB LEXIS 17, at *6 (TTAB 2022). This opinion employs citations to Board decisions in the Lexis legal database and cites only precedential decisions. *See* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 101.03 (2025).

[3] Leilei Jiang Decl. ¶ 3 (51 TTABVUE 2).

(3) the mark comprises the name and portrait of a particular living individual without that individual's written consent, pursuant to Trademark Act Section 2(c), 15 U.S.C. § 1052(c);

(4) abandonment, pursuant to Trademark Act Section 45, 15 U.S.C. § 1127;

(5) the mark is used in a merely ornamental fashion, and, thus, fails to function as a mark, pursuant to Trademark Act Sections 1, 2, and 45, 15 U.S.C. §§ 1051-52, 1127; and

(6) fraud on the USPTO in procuring the registration.[4]

Respondent admitted certain allegations pertaining to his use of the mark in his Answer to the Amended Petition to Cancel, and denied the remaining salient allegations.[5] He also asserted several purported "affirmative defenses,"[6] which we do not address as such because they are merely amplifications of his denials. *See Mars Generation, Inc. v. Carson*, No. 91224726, 2021 TTAB LEXIS 386, at *4 (TTAB 2021) (amplifications of denials are not true affirmative defenses).

We have considered the evidence of record and arguments made by the parties. For the reasons set forth below, we deny the Petition to Cancel because Petitioner has failed to prove its entitlement to a statutory cause of action.

I. Evidentiary and Pleading Issues

The record includes the pleadings and, pursuant to Trademark Rule 2.122(b), 37 C.F.R. § 2.122(b), the file of the challenged registration. Petitioner made of record the following evidence during its trial period:

- Notice of Reliance on what are purported to be certain of Respondent's written responses to Petitioner's Interrogatories,

[4] *See* 47 TTABVUE.

[5] 49 TTABVUE.

[6] *Id.* at 13-14.

Requests for Production of Documents, or Requests for Admission; excerpts from a transcript of the discovery deposition of Respondent and corresponding exhibits; and various Internet materials;[7] and

- Testimony Declaration of Leilei Jiang, Petitioner's Secretary General and exhibits.[8]

Respondent did not make any evidence of record during his trial period. During his time for filing a brief, he filed (in one combined filing) a slightly more than one-page "Summary Response to Petitioner's Opening Trial Brief,"[9] a three-page "Motion to Strike Testimonial Declaration of Leilei Jiang,"[10] a nineteen-page "Response to Petitioner's Notice of Reliance,"[11] and a three-page "Response to Testimonial Declaration of Leilei Jiang."[12] Petitioner responded to the Motion to Strike and requested that the Board "strike the improper and extraneous documents filed concurrently with the motion to strike."[13] The Board deferred consideration of Respondent's motion and Petitioner's response thereto to final decision.[14]

---

[7] 50 TTABVUE. The purported written discovery responses do not include Respondent's signature or (in the case of the interrogatories) a verification. *See id.* at 10-29. The deposition excerpts do not include the witness's oath, whether the witness requested review or made any corrections, or the court reporter's certificate. *See id.* at 33-66. FED. R. CIV. P. 30. But we have considered this evidence, keeping in mind these deficiencies, because Respondent did not object.

[8] 51 TTABVUE. The witness's "duties involve overall management of Petitioner, including but not limited to addressing concerns of Petitioner's members relating to both the domestic and international marketplaces and overseeing the exposure and recognition of Petitioner and Petitioner's members in the domestic and international markets." Leilei Jiang Decl. ¶¶ 1-2 (*id.* at 2).

[9] 56 TTABVUE 32-33.

[10] *Id.* at 2-5.

[11] *Id.* at 6-26.

[12] *Id.* at 27-31.

[13] 57 TTABVUE 2.

[14] 58 TTABVUE 1.

A. Respondent's Motion to Strike and Response to Testimony Declaration of Leilei Jiang

Turning first to Respondent's Motion to Strike the testimony declaration of Leilei Jiang[15] and "Response" to the declaration,[16] both filings raise the same alleged deficiencies, namely: (1) lack of authentication of identity of the signing witness; (2) no proof of the witness's official title with Petitioner; (3) lack of evidence of translation of Chinese documents; (4) improper execution and signature by the witness under Chinese and "international" law; (5) lack of consular authentication; (6) lack of foundation; and (7) speculation and lack of relevance.

Respondent's first six objections listed above (i.e., all except for speculation and lack of relevance) are procedural in nature and therefore should have been raised promptly after Petitioner submitted its evidence. They are overruled as untimely.[17] *Empresa Cubana Del Tabaco v. Gen. Cigar Co.*, No. 92025859, 2022 TTAB LEXIS 454, at *11-12 n.21 (TTAB 2022) ("[O]bjections that the submitting party failed to establish the proper foundation for evidence are procedural in nature and must be raised promptly to allow an opportunity to cure.") (subsequent history omitted); *Societe Des Produits Nestle S.A. v. Taboada*, No. 91232597, 2020 TTAB LEXIS 267,

[15] 56 TTABVUE 2-5.

[16] *Id.* at 27-31.

[17] We note that some of the documents submitted by Petitioner are at least partially in Chinese, depicting an English translation by the Google search engine. *See* 50 TTABVUE 77-84. Section 104 of the TBMP provides, in pertinent part, that a party which intends to rely on any non-English documents should submit a certified translation of the document or "the documents may not be considered," but there is no rule or case that requires the translation to be certified. We have considered the documents for whatever probative value they provide.

at *23-24 (TTAB 2020) (objection to inadequate pretrial disclosure overruled as untimely).

Although Respondent's objections based on lack of relevance and speculation were timely asserted, we also overrule them. Suffice it to say, "we simply accord the evidence whatever probative value it deserves, if any at all ... Ultimately, the Board is capable of weighing the relevance and strength or weakness of the objected-to testimony and evidence in this specific case, including any inherent limitations, and this precludes the need to strike the testimony and evidence." *Hunt Control Sys. Inc. v. Koninklijke Philips Elecs. N.V.*, No. 91173417, 2011 TTAB LEXIS 137, at *18 (TTAB 2011); *see also Krause v. Krause Publ'ns Inc.*, No. 92041171, 2005 TTAB LEXIS 487, at *10 (TTAB 2005) ("Where we have relied on testimony to which respondent objected, it should be apparent to the parties that we have deemed the material both admissible and probative to the extent indicated in the opinion.").

B. Respondent's Summary Response and Response to Notice of Reliance

We turn next to Respondent's "Summary Response to Petitioner's Opening Trial Brief," and "Response to Petitioner's Notice of Reliance."[18] The Summary Response states the following:

> Registrant notes that Petitioner's brief largely reiterates the same arguments and claims already raised during the discovery and motion phases of this proceeding. Registrant has previously responded to each of those allegations in detail through prior filings, evidence, declarations, and formal responses.

[18] 56 TTABVUE at 6-25, 32-33.

> Registrant hereby reaffirms all positions, arguments, and evidence previously presented, and maintains that Petitioner's claims are unsupported by facts or applicable law and should not be sustained.
>
> Given that Petitioner's brief presents no new factual developments or legal arguments, Registrant respectfully submits this summary response in lieu of a point-by-point reply, while preserving all prior objections, defenses, and rights asserted throughout this case.[19]

We agree with Petitioner that this argument is insufficient to make of record evidence introduced by Respondent earlier in the proceeding (i.e., in connection with Petitioner's motion for summary judgment).[20] Under Trademark Rule 2.121, "[n]o testimony shall be taken or evidence presented except during the times assigned, unless by stipulation of the parties approved by the Board, or upon motion granted by the Board, or by order of the Board." 37 C.F.R. § 2.121. *See also Spotify AB v. U.S. Software Inc.*, No. 91243297, 2022 TTAB LEXIS 2, at *5 (TTAB 2022) (objection sustained to testimony declaration executed more than one year prior to trial); *Hole In 1 Drinks, Inc. v. Lajtay*, No. 92065860, 2020 TTAB LEXIS 9, at *4 (TTAB 2020) ("a party may introduce testimony and evidence only during its assigned testimony period") (citation omitted). Moreover, in the order denying Petitioner's summary judgment motion, the Board explicitly advised Respondent that, "[t]o be considered at final hearing, any … evidence must be properly introduced during the appropriate trial period."[21] Thus, we have considered only evidence that was properly introduced

[19] *Id.* at 32.

[20] *See* 59 TTABVUE 4-5.

[21] 37 TTABVUE 10 n.8.

during the parties' testimony periods — and in this case, Respondent did not introduce any evidence.

As to Respondent's "reaffirmed" arguments in his "Summary Response," we confirmed recently in *In re Princeton Equity Grp. LLC*, No. 97397212, 2025 TTAB LEXIS 242 (TTAB 2025), that merely "repeating" and "restating" arguments made during prosecution is insufficient to maintain them on appeal. *Id.* at *8 (citing *SmithKline Beecham Corp. v. Apotex Corp.*, 439 F.3d 1312, 1320 (Fed. Cir. 2006)). We see no reason to treat an inter partes case differently. Here, as in *Princeton Equity*, Respondent's incorporation of prior arguments falls well short of any substantive attempt to address the issues or evidence, and we will not look back in the record to determine which of Respondent's arguments he is advancing at trial.

The "Response to Petitioner's Notice of Reliance," however, addresses the significance of exhibits submitted by Petitioner, and presents other arguments.[22] Because the document was timely filed and does not (even together with Respondent's two-page "Summary Response") exceed the applicable page limitations of a trial brief, we have considered this filing as part of Respondent's brief. But we have not considered any "arguments" that are in the nature of untimely testimony as they are unsworn and not timely filed during Respondent's trial period. Nor have we considered the four hyperlinks to internet materials in the Response which do not

[22] *See* 56 TTABVUE 6-26. We have interpreted Respondent's arguments about the "first" and "second" instances as referring to the summary judgment and trial phases of this proceeding. To the extent Respondent argues that "the first instance judge" treated arguments or evidence in a specific manner, this panel is not bound by an interlocutory decision denying summary judgment. *Perry v. Gen. Conf. Corp. of Seventh-day Adventists*, No. 92017554, 1996 TTAB LEXIS 41, at *68 n.7 (TTAB 1996).

relate to any materials in the trial record.[23] *See In re ADCO Indus. – Techs., L.P.*, No. 87545258, 2020 TTAB LEXIS 7, at *4 (TTAB 2020); *In re Aquitaine Wine USA, LLC*, No. 86928469, 2018 TTAB LEXIS 108, at *27 n.21 (TTAB 2018) (Board does not consider websites for which only links are provided).

C. Petitioner's Late-Filed Application and Supplemental Pleading

As detailed above, the challenged registration issued on July 2, 2019. Petitioner filed the cancellation proceeding on January 29, 2021. The Board denied Petitioner's April 22, 2022 motion for summary judgment on August 31, 2022 based on insufficiently pleaded and factually unsupported statutory entitlement, but allowed Petitioner time to replead.[24]

In its Second Amended Petition to Cancel, which is Petitioner's operative pleading, Petitioner pleaded new allegations related to its statutory entitlement:[25]

> 7. Registration No. 5795348 ("Registrant's Mark") uses, in part, Chinese words and symbols, which will cause

[23] *See* 56 TTABVUE 23-24.

[24] 37 TTABVUE 6-10. The Board also found Petitioner's claims under Sections 2(a) and 2(c) of the Trademark Act and claim of fraud to be insufficiently pleaded. *Id.* at 11-14.

[25] Second Amended Petition to Cancel ¶¶ 7-18 (redline) (47 TTABVUE 19-20). The Second Amended Petition to Cancel was filed May 7, 2024, just before the elapse of the five-year anniversary of Respondent's registration. Nonetheless, because commencement of a cancellation proceeding involving a registration within five years of the date of registration tolls Trademark Act Section 14 for the purpose of adding claims against the registration during the pendency of the Board proceeding, Petitioner could amend to add new claims or facts supporting its entitlement, if otherwise permitted. *See Ashland Licensing & Intellectual Prop. LLC v. Sunpoint Int'l Grp. USA Corp.*, No. 92057294, 2016 TTAB LEXIS 219, at *10 (TTAB 2016) ("[S]o long as the cancellation proceeding commences within five years of the date of registration, the five-year limitation under Trademark Act Section 14 is tolled by the commencement of a cancellation action for the purpose of adding claims against the registration by that petitioner.").

consumers to reasonably believe the goods are manufactured either in China or by a Chinese source.

8. By using Chinese words and symbols, Zhejiang and its members reasonably believe that consumers will associate Registrant's Mark with Zhejiang and/or Zhejiang's members despite there being no association between Zhejiang and its members and Registrant's Mark.

9. Zhejiang and its members reasonably believe that this mistaken belief of an association with Registrant's Mark will cause consumers to lose faith and trust in Zhejiang and its members and will have a chilling effect on the pet products sold by Zhejiang's members.

10. Zhejiang also has a direct interest in not having Registrant's Mark mistakenly associated with its organization as it may deter other members from joining the organization.

11. Should Xi Jinping, President of the People's Republic of China ("President Xi"), or the Chinese government believe that Registrant's Mark was associated with or approved by Zhejiang or one of its members, Zhejiang and its members could suffer harm the Chinese government might take against them.

12. Zhejiang and its members have multiple particularized harms that are not common to that of the general public.

13. Zhejiang also had a concept for a trademark that it believed could be blocked from registering by Registrant's Mark.

14. Zhejiang came across Registrant's Mark when searching for marks that may be similar to Zhejiang's concept.

15. Zhejiang wanted to wait for this cancellation to be resolved before filing its intent to use the conceptual design for some pet products.

16. Given how long this proceeding was lasting, Zhejiang decided to file the application for its conceptual mark that Zhejiang intended to use. As such, Zhejiang filed Trademark Application No. 97727102.

> 17. Despite the differences in Trademark Application No. 97727102 and Registrant's Mark, Zhejiang believes that Registrant's Mark might be used by Registrant to block the registration of Trademark Application No. 97727102.
>
> 18. Zhejiang and its members stand to be injured by the ongoing registration of Registrant's Mark and are seeking the cancellation of Registrant's Mark in its entirety.

Leilei Jiang's trial testimony echoes these pleaded allegations, namely:[26]

- "Petitioner initially discovered Registrant's Mark when conducting a trademark search for an anticipated trademark that the Petitioner was intending to use to promote some of the pet products originating from Petitioner and its members under a single, unified trademark."
- "Petitioner believed Registrant's Mark to be similar to Petitioner's intended trademark and believed an Application for Petitioner's intended mark would be refused or challenged by Registrant."
- "Petitioner wanted to wait for [the cancellation] proceeding to be resolved before filing its intent to use the conceptual design for some pet products, but since this proceeding was taking a long time, Petitioner decided to file the application for its conceptual mark that Petitioner intended to use. As such, Petitioner filed Trademark Application No. 97727102."

Leilei Jiang's declaration introduced a partial printout of application Ser. No. 97727102 (the '102 Application) without all of the sections expanded from the USPTO's electronic records (TSDR) for the composite mark shown below ("Petitioner's Mark"):[27]

[26] Leilei Jiang Decl. ¶ ¶13-15 (51 TTABVUE 4);

[27] *See* Leilei Jiang Decl. Exh. P20 (*id.* at 8-9).

The partial printout shows the mark depicted above and the date the '102 Application was filed (Dec. 21, 2022), lists Petitioner as the current owner, and shows that the application remains pending as of the printed date.[28] The applied-for mark includes a drawing of a person's head, some non-Latin characters and the English phrases above and below the image stating ZHEJIANG PET PRODUCTS and ARE THE BEST.[29]

II. Entitlement to a Statutory Cause of Action

A. Relevant Law

A petitioner in a cancellation proceeding before the Board must prove its entitlement to a statutory cause of action. *Australian Therapeutic Supplies Pty. Ltd. v. Naked TM, LLC*, 965 F.3d 1370, 1372 (Fed. Cir. 2020); *see also Luca McDermott Catena Gift Tr. v. Fructuoso-Hobbs SL*, 102 F.4th 1314, 1325 (Fed. Cir. 2024);

[28] 15 TTABVUE 9.

[29] The drawing also appears to include a bone on the left and a pet leash underneath the head, but we cannot determine with any certainty what the drawing on the right might represent.

Empresa Cubana Del Tabaco v. Gen. Cigar Co., 753 F.3d 1270, 1274 (Fed. Cir. 2014); *Philanthropist.com, Inc. v. General Conf. Corp. of Seventh-Day Adventists*, No. 92065178, 2021 TTAB LEXIS 205, at *14 (TTAB 2021) ("Petitioner must maintain its entitlement to the statutory cause of action throughout the proceeding and affirmatively prove its existence at the time of trial by introducing evidence to support the allegations in its pleading that relate to such entitlement as an element of its case-in-chief.").

To establish its entitlement to petition to cancel Respondent's registration, Petitioner must demonstrate: (1) its claims fall within the zone of interests protected by the statute (i.e., it has a "real interest" in the outcome of the proceeding); and (2) damage proximately caused by the registration (i.e., a reasonable basis for its belief in damage). *See Curtin v. United Trademark Holdings, Inc.*, 137 F.4th 1359, 1367 (Fed. Cir. 2025); *Corcamore, LLC v. SFM, LLC*, 978 F.3d 1298, 1303-07 (Fed. Cir. 2020); *Australian Therapeutic*, 965 F.3d at 1373-74; *Empresa Cubana*, 753 F.3d at 1275. Petitioner bears the burden of proving statutory entitlement by a preponderance of the evidence. *Shenzhen IVPS Tech. Co. v. Fancy Pants Prods., LLC*, No. 91263919, 2022 TTAB LEXIS 383, at *3-6 (TTAB 2022).

The purpose of the zone-of-interests requirement is to "foreclose[ ] suit only when a plaintiff's interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress authorized that plaintiff to sue." *Corcamore*, 978 F.3d at 1305 (quoting *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 130 (2014)). "[W]hether a zone-of-

interests limitation applies in a particular administrative context, and whether the class of people who may seek administrative relief in a particular context is coextensive with the class of people who may sue in court, will depend on the language of the particular statute and the particular interests involved." *Curtin,* 137 F.4th at 1369.

The proximate causation requirement requires a petitioner's belief of damage to have "a sufficiently close connection" to the registered mark at issue. *Lexmark*, 572 U.S. at 133. In particular, "a harm will be 'too remote' from the alleged unlawful conduct if it 'is purely derivative of misfortunes visited upon a third person by the defendant's acts.'" *Luca McDermott*, 102 F.4th at 1327 (quoting *Lexmark*, 572 U.S. at 133). As with the zone-of-interests requirement, the "[p]roximate-cause analysis is controlled by the nature of the statutory cause of action." *Lexmark*, 572 U.S. at 133.

If Petitioner demonstrates statutory entitlement as to at least one claim, it has satisfied the requirement for any other legally sufficient claim. *Tequila Cuadra S. de RL de CV v. Manufacturera De Botas Cuadra, S.A. de C.V.*, No. 91282327, 2025 TTAB LEXIS 207, at *15 (TTAB 2025); *Nike, Inc. v. Palm Beach Crossfit, Inc.*, No. 91218512, 2015 TTAB LEXIS 314, at *7-8 (TTAB 2015).

B. Analysis

Petitioner argues that "a trade association, having a real interest in the outcome of the proceedings, may maintain a[ ] [cancellation, irrespective of the grounds therefor,] without proprietary rights in a mark or without asserting that it has a right

or has an interest in using the … mark … registered by a[ ] [defendant]."[30] Further, that "[e]ven in the absence of injury to itself, an association may have standing solely as the representative of its members.'"[31] Petitioner acknowledges "[a] trade organization, however, 'must … allege[ ] an adverse [e]ffect on its own interests or those of its members which will result from the' continued registration of the involved mark."[32] As explained further below, Petitioner has failed to establish by a preponderance of the evidence that it has a real interest in the proceedings or a reasonable belief in damage.

First, Petitioner alleges that the purported use of President Xi's likeness and name in Respondent's registered mark causes harm to Petitioner and its members, establishing Petitioner's entitlement to bring the asserted claims. Petitioner alleges that the portrait depicted in the registered mark shows President Xi, and the Chinese characters for "Xi Da Da" are a nickname for President Xi.[33] For purposes of this analysis, we assume (without deciding) that the image and likeness in fact refer to President Xi.[34]

---

[30] 55 TTABVUE 13 (shown as quoted in brief) (quoting *Jewelers Vigilance Comm., Inc. v. Ullenberg Corp.*, 823 F.2d 490, 493 (Fed. Cir. 1987) (subsequent history omitted)).

[31] *Id.* (quoting *Jewelers Vigilance*, 823 F.2d at 493). *See also Jewelers Vigilance*, 823 F.2d at 494 (a trade association, as "the watchdog for the industry," may have a right to oppose a mark's registration where its individual members each have a personal interest in cancelling the accused mark).

[32] 55 TTABVUE 13 (shown as quoted in brief) (quoting *Jewelers Vigilance*, 823 F.2d at 493).

[33] *Id.* at 21-22, 24-25.

[34] Petitioner provided evidence in support of its claim that the image is intended to represent President Xi. Petitioner relies on, *e.g.,* Notice of Reliance Exh. C (photograph of President Xi) (50 TTABVUE 74); Exh. D (internet print out of lyrics from song entitled "Xi Dada Loves Peng Mama") (*id.* at 75-84), Exh. E (Wikipedia entry regarding emblems of the Chinese Communist Party) (*id.* at 85-87), Exh. F (Etsy shop named "XiDaDaPengMaMa") (*id.* at 88).

Neither Petitioner nor its members are President Xi, nor do they have any direct connection to President Xi. Mere Chinese citizenship is not sufficient to demonstrate a connection. As Leilei Jiang testified, "Neither Petitioner nor Petitioner's counsel have any influence or ability to control any affairs of the Chinese government or the Chinese criminal justice system."[35] Thus, the interests of Petitioner and its members do not fall within the zone of interests protected by any of the asserted claims. The asserted harms are "purely derivative of misfortunes visited upon a third person by the defendant's acts" and insufficient to demonstrate proximate harm to Petitioner or its members. *Luca McDermott*, 102 F.4th at 1327 (citing *Lexmark*, 572 U.S. at 133).

We distinguish this case from the decisions in the ex parte appeals cited by Petitioner in support of its assertion that cancellation of the challenged mark is appropriate regardless of whether the President of the People's Republic of China is actively participating in the litigation or not,"[36] because entitlement to a statutory cause of action is required only of a plaintiff in inter partes cases. *Cf. In re McKee Baking Co.*, No. 73226809, 1983 TTAB LEXIS 71, at *2 (TTAB 1983) (in an ex parte proceeding, the examining attorney is a representative of the USPTO, and thus "there

Respondent testified that the image of the mark came to him in prayer and is not intended to represent President Xi. *See* Notice of Reliance Exh. P13 (Respondent's Discovery Dep. at 38-41, 43, 47, 49-50) (*id.* at 39-43, 46, 48-49); Notice of Reliance Exh. P9 (Respondent's Response to Interrogatory No. 16) (*id.* at 25) ("The trademark has nothing to do with Xi Jin Ping [sic].").

[35] Leilei Jiang Decl. ¶ 17 (51 TTABVUE 4).

[36] 55 TTABVUE 24-25 (citing *ADCO Indus.*, 2020 TTAB LEXIS 7 (affirming refusal of registration of TRUMP-IT and design under Trademark Act Sections 2(a) and 2(c)) and *In re Hoefflin*, No. 77632391, 2010 TTAB LEXIS 438 (TTAB 2010) (affirming refusals of registration of OBAMA BAHAMA PAJAMAS, OBAMA PAJAMA, and BARACK'S JOCKS DRESS TO THE LEFT under Section 2(c)).

is only one party") (subsequent history omitted). The decisions in these ex parte appeals are inapposite.

We also distinguish cases where the plaintiff demonstrated that it had a direct connection to the identified individual or institution in support of entitlement to assert claims under Trademark Act Sections 2(a) or 2(c). For example, in *Jewelers Vigilance*, 823 F.2d at 483 (cited by Petitioner and discussed above),[37] a trade association of suppliers, wholesalers, distributors and retailers of DeBeers diamonds and diamond jewelry was found entitled to assert a Section 2(a) claim against registration of a mark incorporating the name DEBEERS. In a more recent case, *M/S R.M. Dhariwal (HUF) 100% EOU v. Zarda King Ltd.*, No. 91231033, 2019 TTAB LEXIS 95 (TTAB 2019), the applied-for mark MANIKCHAND was the "personal name" of the opposer's founder, and also was used as part of its corporate name. Here, unlike in these cases and others, Petitioner has not demonstrated any direct connection between President Xi and Petitioner or its members.

The alleged harm to Petitioner and its members as a result of Respondent's mark incorporating the purported image of President Xi and Chinese characters also is speculative and highly attenuated. The witness testified "[s]hould the Chinese government discover Registrant's Mark and have the mistaken belief that Registrant's Mark was associated with or approved by Petitioner or one of its members, Petitioner and its members could suffer 'significant harm' from the Chinese

[37] *See supra* text accompanying notes 30-32.

government."[38] The witness has not explained why the Chinese government would mistakenly associate Respondent's mark with Petitioner or its members and the other evidence of record does not fill this gap. *See Stuart Spector Designs Ltd. v. Fender Music Instruments Corp.*, No. 91161403, 2009 TTAB LEXIS 132, at *49 n.42 (TTAB 2009) (testimony that is speculative or unsupported by documentary evidence has limited probative value). Petitioner has failed to prove that its fear of retribution from the Chinese government based on the registration of Respondent's mark is reasonable.

Next, we turn to Petitioner's allegations that Petitioner and its members "sell pet products to major distributors, wholesalers, and chain stores internationally, including throughout the United States, who then in turn sell said pet products across the United States."[39] Petitioner's witness further asserts that "[c]onsumers of pet products from Petitioner and its members will recognize and associate pet products with Chinese lettering as belonging to, or likely connected to or associated with, Petitioner and its members due to Petitioner's prominence in the pet product industry."[40] Also, use of Respondent's mark on "low quality and unregulated products, which will cause consumers with the mistaken belief in a connection or association with Petitioner to lose faith and trust in the products from Petitioner and its members

[38] Leilei Jiang Decl. ¶ 12 (51 TTABVUE 3-4).

[39] Leilei Jiang Decl. ¶ 6 (*id.* at 3).

[40] Leilei Jiang Decl. ¶ 8 (*id.*); *see also* Leilei Jiang Decl. ¶ 9 ("Petitioner and its members believed, and continue to believe, that consumers of pet products from Petitioner and its members will have the mistaken belief that Registrant's pet products, which also use Chinese characters, are either from, associate with, or approved by Petitioner or one of Petitioner's members.") (*id.*).

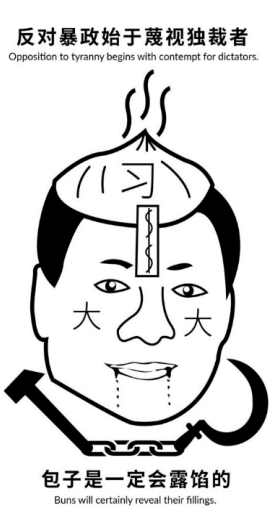
and will have a chilling effect on the pet products sold by Petitioner's members" and will "deter other potential members from joining Petitioner's organization."[41] These statements are not specifically about U.S. consumers nor is there any evidence of record that U.S. consumers know of Petitioner or its members. Furthermore, the testimony is far too speculative to demonstrate a real interest in the proceeding or a reasonable belief in harm from the challenged registration.

Moreover, it is not enough for Petitioner to prove merely that it or its members are in the same business as Respondent.[42] It also must establish that it has a present or prospective interest in using a similar mark or term. *See, e.g., U.S. Olympic Comm. v. Tempting Brands Netherlands B.V.*, No. 91233138, 2021 TTAB LEXIS 45, at *21 (TTAB 2021) (finding entitlement to bring a Section 2(a) false suggestion claim by virtue of, inter alia, sales of goods and other uses of the same identity); *Dhariwal*, 2019 TTAB LEXIS 95, at *15 ("Standing to assert a § 2(c) claim may be established by facts that Opposer is a competitor of Applicant that has a present or prospective right to use the name MANIKCHAND"); *Am. Vitamin Prods. Inc. v. DowBrands Inc.*, No. 92019036, 1992 TTAB LEXIS 10, at *5-6 (TTAB 1992) (petitioner entitled to seek cancellation on ground of abandonment because it "is engaged in the manufacture and sale of goods which are related to those identified in the subject registrations" intended to be offered under a mark identical to the respondent's mark).

[41] Leilei Jiang Decl. ¶¶ 10-11 (*id.*)

[42] Petitioner's evidence to show that it and its members are competitors of Applicant's pet waste bags in the United States is vague, confusing, and unsupported by documentary evidence, but it is unchallenged. For purposes of our analysis, we assume that Petitioner's members sell products relating to pet care in the United States.

In this case, the only proof we have been supplied as to Petitioner's bona fide intent to use a "similar" mark is Leilei Jiang's vague testimony and the partial TSDR printout of the '102 Application. As noted above, the partial printout shows the mark but does not include all of the relevant information as pertains to the application (including the goods).[43] Respondent's mark and the mark depicted in the '102 Application are as follows:



We are deeply skeptical of Leilei Jiang's testimony regarding Petitioner's intent to use this mark prior to filing the complaint and its discovery of Respondent's mark during a search. The applied-for mark was not mentioned in any filing until Petitioner's Second Amended Petition to Cancel, which Petitioner filed after the Board denied Petitioner's motion for summary judgment on the basis of insufficient

[43] We need not decide whether the application is properly of record because we find it would not assist in finding that Petitioner has statutory entitlement. Petitioner also has not addressed whether the late-filed '102 Application would support Petitioner's statutory entitlement without additional proof of use or intent to use the mark; thus, we need not reach these questions.

pleading of entitlement. There is no documentary evidence of record corroborating the development of the mark or Petitioner's intent to use it in the United States. *Cf. Vans, Inc. v. Branded, LLC*, No. 92066859, 2022 TTAB LEXIS 294, at *68-69 (TTAB 2022) ("[w]ithout credible documentation, [Petitioner] has chosen to rely on ... the testimony of a single witness, and this witness's testimony is both vague on critical points and riddled with inconsistencies. In short, it does not persuade us.").

Given the timing of the filing of the '102 Application and the unexplained structural similarities of the parties' marks (which we believe are highly unlikely to be merely coincidental), we are not convinced that Petitioner's so-called intent to use this mark was formed separate and apart from its prior knowledge of Respondent's mark. If anything, the evidence strongly suggests that Petitioner's intent to use this mark was formed after the Board denied Petitioner's summary judgment motion in a pretextual attempt to manufacture entitlement. Leilei Jiang's testimony on this point is not credible, and we give it very little probative value. *See, e.g.*, *Tiger Lily Ventures Ltd. v. Barclays Cap. Inc.*, 35 F.4th 1352, 1363 (Fed. Cir. 2022) ("Decisions about credibility of witnesses and weight of evidence are committed to the sound discretion of the Board as the trier of fact."), *quoted in In re Uman Diagnostics AB*, No. 88960633, 2023 TTAB LEXIS 77, at *43 (TTAB 2022).

Moreover, despite similarities in structure (namely, non-English characters above and below a male face, with English text underneath, and designs framing the bottom of the face), Petitioner's proposed mark and Respondent's mark are not at all similar. Indeed, Petitioner appears to have acknowledged this when it pleaded that there are

"differences" between the marks.[44] Thus, Petitioner's assertion that the challenged registration poses a "potential obstacle" to its application or use of the mark[45] is not reasonable under the circumstances.

C. Conclusion

We acknowledge that a plaintiff's entitlement to a statutory cause of action is "a low threshold…." *Univ. of Ky. v. 40-0, LLC*, No. 91224310, 2021 TTAB LEXIS 68, at *14 (TTAB 2021) (quoting *Syngenta Crop Prot., Inc. v. Bio-Chek, LLC*, No. 91175091, 2009 TTAB LEXIS 70, at *16 n.8 (TTAB 2009) (internal citation omitted)). But in this case, Petitioner failed to carry its burden to establish its entitlement to a statutory cause of action by a preponderance of the evidence.

Petitioner's failure to establish statutory entitlement, by itself, is a sufficient basis to deny this cancellation, and we need not reach the substance of the claims. *See Curtin,* 137 F.4th at 1371-72; *Lumiere Prods., Inc. v. Int'l Tel. & Tel. Corp.*, No. 91066857, 1985 TTAB LEXIS 42, at *3 (TTAB 1985).

Decision:

The Petition to Cancel Registration No. 5795348 is **denied**.

[44] Second Amended Petition to Cancel ¶ 17 (47 TTABVUE 4).

[45] *See supra* Section I(C); 55 TTABVUE 14-15.