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
General Email: TTABInfo@uspto.gov

wbc

October 25, 2022

Cancellation No. 92079816

Light Street Ventures, LLC

v.

Light Street Capital Management, LLC

By the Trademark Trial and Appeal Board:

This proceeding comes before the Board on Light Street Capital Management, LLC's ("Respondent") motion to dismiss filed pursuant to Fed. R. Civ. P. 12(b)(6), in lieu of an answer. 4 TTABVUE. The motion is contested by Light Street Ventures, LLC ("Petitioner").[1]

Motion to Dismiss

To state a claim upon which relief can be granted, a plaintiff need only allege sufficient factual matter as would, if proved, establish that (1) the plaintiff has an entitlement to a statutory cause of action, and (2) a valid ground exists for opposing or cancelling the mark. *See Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024,

[1] The Board has considered the parties' submissions and presumes the parties' familiarity with the factual bases for the motion, and does not recount the facts or arguments here, except as necessary to explain the Board's order. *See Guess? IP Holder L.P. v. Knowluxe LLC*, 116 USPQ2d 2018, 2019 (TTAB 2015).

213 USPQ 185, 187 (CCPA 1982). Specifically, a complaint must contain sufficient factual matter, accepted as true, that states a claim to relief that is plausible on its face. *See Ashcroft v. Iqbal*, 556 U.S. 662 (2009). "The elements of each claim should be stated concisely and directly, and include enough detail to give the defendant fair notice." *Fair Indigo LLC v. Style Conscience*, 85 USPQ2d 1536, 1538 (TTAB 2007) (citing Fed. R. Civ. P. 8(e)(1) and *Harsco Corp. v. Elec. Scis. Inc.*, 9 USPQ2d 1570, 1571 (TTAB 1988) (since function of pleadings is to give fair notice of claim, a party is allowed reasonable latitude in its statement of its claims)). "The purpose of a Rule 12(b)(6) motion is to challenge 'the legal theory of the complaint, not the sufficiency of any evidence that might be adduced' and 'to eliminate actions that are fatally flawed in their legal premises and destined to fail.'" *Fair Indigo*, 85 USPQ2d at 1538 (quoting *Advanced Cardiovascular Sys., Inc. v. SciMed Life Sys., Inc.*, 988 F.2d 1157, 26 USPQ2d 1038, 1041 (Fed. Cir. 1993)).

Entitlement

A party in the position of plaintiff may oppose registration of a mark where such opposition is within the zone of interests protected by the statute and the party's reasonable belief in damage is proximately caused by the registration of the mark. *See Corcamore, LLC v. SFM, LLC*, 978 F.3d 1298, 2020 USPQ2d 11277, at *6-7 (Fed. Cir. 2020), *cert. denied*, 141 S. Ct. 2671 (2021); *Australian Therapeutic Supplies Pty. Ltd. v. Naked TM, LLC*, 965 F.3d 1370, 2020 USPQ2d 10837, at *3 (Fed. Cir. 2020) (citing *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 109 USPQ2d 2061, 2067 n.4 (2014)); *Peterson*, 2020 USPQ2d 11526, at *5. "Proof of

[entitlement to a statutory cause of action] in a Board [proceeding] is … intended only to ensure that the plaintiff has a real interest in the matter, and is not a mere intermeddler." *Syngenta Crop Prot., Inc. v. Bio-Chek, LLC*, 90 USPQ2d 1112, 1118 n.8 (citing *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1025-26 (Fed. Cir. 1999)).

Petitioner has alleged, among other things, common law rights in the mark LIGHT STREET "since at least December 6, 2015 in connection with the offering, marketing, advertising, and promotion of its investment and financial products and services"; and that Respondent's mark is likely to be confused with Petitioner's mark. 1 TTABVUE 4-5. Petitioner has set forth the requisite interest in this matter and reasonable belief of damage from the registration of Respondent's mark necessary to plead its entitlement to maintain the cancellation. *See, e.g.*, *Barbara's Bakery, Inc. v. Landesman*, 82 USPQ2d 1283, 1285 (TTAB 2007); *Liberty Trouser Co. v. Liberty & Co.*, 222 USPQ 357, 358 (TTAB 1983).

Likelihood of Confusion

A mark may be refused registration under Section 2(d) of the Trademark Act where it:

> [c]onsists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive.

To sufficiently plead such a claim, a plaintiff need only allege priority of use and that its mark when used in connection with its goods or services so resembles the

defendant's mark when used in connection with their goods or services as to be likely to cause confusion, mistake, or deception. *See* Trademark Act Section 2(d); *Otto Roth & Co. v. Universal Foods Corp.*, 640 F.2d 1317, 209 USPQ 40 (CCPA 1981).

Petitioner alleges that its "first-use for its marks that contain the word 'LIGHT STREET' predate the filing date of the applications for Respondent's Mark or any other date on which the Respondent may rely for purposes of priority"; that the parties marks are likely to be confused by the public; and that the parties' marks are "nearly identical" and are for "confusingly similar services." 1 TTABVUE 5-6. Such factual allegations are sufficient to plead a claim of likelihood of confusion. Despite Respondent's assertion that Petitioner has not asserted its priority over "Respondent's ***actual use*** of its LIGHT STREET mark" (emphasis in original), Petitioner's assertion that it has priority over "any other date on which Respondent may rely for purposes of priority" would include actual use. 1 TTABVUE 5; 4 TTABVUE 3; *see, e.g., Marahus v. Video Duplication Servs. Inc.*, 3 F.3d 417, 7 USPQ2d 1846, 1852 n. 7 (Fed. Cir. 1993)*; Giersch v. Scripps Networks, Inc.,* 90 USPQ2d 1020, 1023 (TTAB 2009); *Kohler C. v. Baldwin Hardware Corp.,* 82 USPQ2d 1100, 1106 (TTAB 2007); *Corp. Document Servs. v. I.C.E.D. Mgmt. Inc.*, 48 USPQ2d 1477, 1479 (TTAB 1998); TBMP § 309.03(c)(2) (2022).

Thus, the motion to dismiss is **denied**.

Joint Petitioners

Two or more parties may file a notice of opposition or a petition for cancellation jointly. However, the required fee must be submitted for each party joined as opposer

or petitioner for each class in the application for which registration is opposed or for each class in the registration for which cancellation is sought. *See* Trademark Rule 2.111(d); *Giersch*, 90 USPQ2d at 1021 n.1; TBMP §§ 303.06, 308.02.

Light Street Ventures, LLC, an Illinois LLC, and Light Street Investments LLC, a Nevada LLC, are both listed as party plaintiffs in the body of the petition to cancel. 1 TTABVUE 1, 3. The ESTTA coversheet, however, lists only Light Street Ventures, LLC as a party plaintiff and the required fee for the petition to cancel appears to have been submitted only as to this party. If Petitioner seeks to add Light Street Investments LLC as a party plaintiff, Petitioner shall have until **November 20, 2022** to advise the Board and to pay the required fee[2] absent which this proceeding will continue with Light Street Ventures, LLC as the sole petitioner and party plaintiff.

Additionally, the signatory for the petition to cancel is identified as "Attorneys for Petitioner." 1 TTABVUE 7. Because Light Street Ventures, LLC is identified as the Petitioner in the ESTTA coversheet, it appears this is the party represented by the signatory. However, it is unclear if use of the singular "Petitioner" is a typographical error and the signatory represents both proposed party plaintiffs. If an opposition or petition for cancellation is filed by joint opposers or petitioners, and the different plaintiffs are represented by different attorneys or other authorized representatives, rather than by the same one(s), the plaintiffs must appoint one lead counsel, to whom

[2] Inasmuch as the allegations in the petition to cancel refer to both Light Street Ventures, LLC and Light Street Investments LLC jointly as "Petitioners," should Petitioner seek to add Light Street Investments LLC as a party plaintiff, an amended petition to cancel which refers to both proposed petitioners is not required.

the Board may send postal correspondence intended for the plaintiffs. *See* TBMP § 117.02 and authorities cited.

In view thereof, if Petitioner seeks to proceed with joint petitioners, Petitioner shall have until **November 20, 2022** to also advise the Board if it represents both proposed party plaintiffs and if not, to appoint lead counsel absent which this cancellation will proceed with Light Street Ventures, LLC as the party plaintiff represented by the law firm Fuksa Khorshid, LLC.

Schedule

Proceedings are resumed. Discovery and trial dates are reset as follows:

Time to Answer	December 20, 2022
Deadline for Discovery Conference	January 19, 2023
Discovery Opens	January 19, 2023
Initial Disclosures Due	February 18, 2023
Expert Disclosures Due	June 18, 2023
Discovery Closes	July 18, 2023
Plaintiff's Pretrial Disclosures Due	September 1, 2023
Plaintiff's 30-day Trial Period Ends	October 16, 2023
Defendant's Pretrial Disclosures Due	October 31, 2023
Defendant's 30-day Trial Period Ends	December 15, 2023
Plaintiff's Rebuttal Disclosures Due	December 30, 2023
Plaintiff's 15-day Rebuttal Period Ends	January 29, 2024
BRIEFS SHALL BE DUE AS FOLLOWS:	
Plaintiff's Main Brief Due	March 29, 2024
Defendant's Main Brief Due	April 28, 2024
Plaintiff's Reply Brief Due	May 13, 2024

General Information

Generally, the Federal Rules of Evidence apply to Board trials. Trial testimony is taken and introduced out of the presence of the Board during the assigned testimony periods. The parties may stipulate to a wide variety of matters, and many

requirements relevant to the trial phase of Board proceedings are set forth in Trademark Rules 2.121 through 2.125. These include pretrial disclosures, the manner and timing of taking testimony, matters in evidence, and the procedures for submitting and serving testimony and other evidence, including affidavits, declarations, deposition transcripts and stipulated evidence. Trial briefs shall be submitted in accordance with Trademark Rules 2.128(a) and (b). Oral argument at final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).