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PRECEDENT OF THE TTAB

Mailed: September 3, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Shanghai Y&A Garment Co., Ltd.
v.
Mango Republic LLC

Cancellation No. 92086279

Norman R. Van Treeck of Pasadena Legal Group,
for Shanghai Y&A Garment Co., Ltd.

Gregory Kenyota of Patel IP PC,
for Mango Republic LLC.

Before Wellington, Elgin, and Lavache,
Administrative Trademark Judges.

Opinion by Lavache, Administrative Trademark Judge:

Petitioner Shanghai Y&A Garment Co., Ltd. petitions to cancel Respondent Mango Republic LLC's registration on the Principal Register for the standard-character mark ZOCY for "jump ropes," in International Class 28.[1]

[1] Registration No. 7254997, issued on December 26, 2023. The registration includes the following translation statement: "The wording 'ZOCY' has no meaning in a foreign language."

The petition for cancellation claims two grounds for cancellation. The first claim is fraud under Trademark Act Section 14(3), 15 U.S.C. § 1064(3), based on Petitioner's allegation that Respondent falsely claimed use of its ZOCY mark in connection with the identified goods as of the underlying application's filing date.[2] The second claim is nonuse under Trademark Act Sections 1(a) and 14(1), 15 U.S.C. §§ 1051(a), 1064(1), based on Petitioner's allegation that Respondent was not using the mark in connection with the identified goods as of the underlying application's filing date.[3]

Respondent's answer to the petition for cancellation denies almost all of Petitioner's allegations, but admits that:

- Respondent filed Application Serial No. 97726283 on December 21, 2022, seeking registration of the mark ZOCY and claiming the mark was first used anywhere, and first used in commerce, at least as early as June 19, 2018; and

- Respondent's attorney at the time represented in the application that Respondent was using the applied-for mark in U.S. commerce in connection with the identified goods and that the submitted specimens showed the applied-for mark in use in connection with those identified goods.[4]

The underlying application, Serial No. 97726283, was filed on December 21, 2022, based on an allegation of use in commerce under Trademark Act Section 1(a), 15 U.S.C. § 1051(a), claiming June 19, 2018, as both the date of first use anywhere and the date of first use in commerce.

[2] Petition for Cancellation, 1 TTABVUE 4-5.

Citations to the record refer to TTABVUE, the Board's online docketing system. The number preceding "TTABVUE" corresponds to the docket entry number, and any numbers following "TTABVUE" refer to the page numbers of the docket entry where the cited materials appear.

[3] *See id.* at 6.

[4] *See* Respondent's Answer, 5 TTABVUE 3; *see also* Petition for Cancellation, 1 TTABVUE 4 (containing the allegations Respondent admitted to). Respondent's Answer also included purported "affirmative defenses," *see* 5 TTABVUE 4, but they are more accurately characterized as amplifications of denials of Petitioner's allegations concerning its entitlement to a statutory cause of action, and we have treated them as such. *See Mars Generation, Inc. v. Carson*, No. 91224726, 2021 TTAB LEXIS 386, at *4 (indicating that amplifications of denials are not true affirmative defenses).

Petitioner filed a brief,[5] but Respondent did not (nor was it required to do so). *See* Trademark Rule 2.128(a)(1), 37 C.F.R. § 2.128(a)(1) (indicating that only the plaintiff is required to file a brief); *Yazhong Investing Ltd. v. Multi-Media Tech. Ventures, Ltd.*, No. 92056548, 2018 TTAB LEXIS 168, at *12 n.13 ("Because Respondent, as defendant herein, is under no obligation to submit evidence or a brief, we do not construe Respondent's failure to do so as a concession of the case."); *see also* TBMP § 801.02(b) ("The filing of a brief on the case is optional, not mandatory, for a party in the position of defendant.").

As explained below, we **deny** the petition as to both claims because Petitioner has failed to establish its entitlement to a statutory cause of action.

I. The Record

The record includes the pleadings and, by rule, Respondent's involved registration file. *See* Trademark Rule 2.122(b)(1), 37 C.F.R. § 2.122(b)(1).[6] Neither party submitted any evidence or testimony during their respective testimony periods. *See* Trademark Rule 2.121(a), 37 C.F.R. § 2.121(a) ("The Trademark Trial and Appeal Board will issue a trial order . . . assigning to each party its time for taking testimony and presenting evidence ('testimony period'). No testimony shall be taken or evidence

[5] Petitioner's Brief, 12 TTABVUE. The text of Petitioner's brief features 1.5 line spacing, but Trademark Rule 2.126(a)(1) requires double-spaced text. 37 C.F.R. § 2.126(a)(1); *see also* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 801.03 (2026). Nonetheless, we have considered the brief because, if the text were double-spaced, it would not exceed the 55-page limit for briefs prescribed by Trademark Rule 2.128(b). *See L'Oreal S.A. v. Marcon*, No. 91184456, 2012 TTAB LEXIS 77, at *4 n.4 (exercising discretion to consider a brief that did not technically comply with Board's rules).

[6] Because the registration file for Registration No. 7254997 is automatically part of the record under Trademark Rule 2.122(b)(1), Petitioner need not have attached exhibits consisting of documents from the registration file to the petition for cancellation.

presented except during the times assigned, unless [otherwise approved by the Board].").

Petitioner attempted to introduce evidence by attaching it to its brief.[7] However, because this evidence was not properly introduced during its assigned testimony period, we have not considered it. *See Hole in 1 Drinks*, 2020 TTAB LEXIS 9, at *5 ("The Board will not consider evidence and other evidentiary materials attached to the briefs unless they were properly made of record during the time assigned for taking testimony."); *see also* TBMP § 704.05(b).

II. Petitioner's Motion for Default Judgment

Petitioner included a "motion for default judgment" in its brief,[8] arguing that "[t]he well-pleaded factual allegations of the Petition are . . . deemed admitted," because, inter alia, Respondent failed to file a timely answer to the notice of institution of the cancellation proceeding.[9] However, this motion is unfounded because Respondent filed an answer denying the relevant allegations on October 21, 2024—well within the provided 40-day deadline.[10] Therefore, contrary to Petitioner's contentions, the allegations in the petition to cancel are not deemed admitted for failure to file an answer, and Petitioner's "motion for default judgment" is **denied**.

[7] Petitioner's Brief, 12 TTABVUE 17-26.

[8] *Id.* at 6-8.

[9] *Id.* at 7.

[10] Respondent's Answer, 5 TTABVUE. Petitioner is also mistaken in stating that Respondent's attorney "has made no appearance on Respondent's behalf." Petitioner's Brief, 12 TTABVUE 7. Although it was not required, Respondent's attorney filed an "Entry of Appearance of Counsel" on the same day Respondent's Answer was filed. *See* Appearance/Power of Attorney, 4 TTABVUE.

III. Petitioner's Entitlement to a Statutory Cause of Action

Establishing an entitlement to a statutory cause of action is a threshold requirement in every inter partes case. *See Corcamore, LLC v. SFM, LLC*, 978 F.3d 1298, 1303 (Fed. Cir. 2020); *Australian Therapeutic Supplies Pty. Ltd. v. Naked TM, LLC*, 965 F.3d 1370, 1373 (Fed. Cir. 2020). Thus, Petitioner, as plaintiff in this cancellation proceeding, must plead and prove its entitlement to a statutory cause of action under Trademark Act Section 14, 15 U.S.C. § 1064. *See, e.g.*, *Meenaxi Enter. v. Coca-Cola Co.*, 38 F.4th 1067, 1071-72 (Fed. Cir. 2022); *Lipton Indus. v. Ralston Purina Co.*, 670 F.2d 1024, 1028 (CCPA 1982) (indicating that "standing," now referred to as "statutory entitlement," must be both properly pleaded and proved); *Philanthropist.com, Inc. v. Gen. Conf. Corp. of Seventh-Day Adventists*, No. 92065178, 2021 TTAB LEXIS 205, at *4 ("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."), *aff'd mem.*, No. 2021-2208, 2022 U.S. App. LEXIS 21811 (Fed. Cir. Aug. 8, 2022).

To establish an entitlement to a statutory cause of action, Petitioner must allege and demonstrate that it has: (1) an interest falling within the zone of interests protected by the statute, i.e., a direct and personal stake in the outcome of a cancellation proceeding; and (2) a reasonable belief in damage proximately caused by the registration of the mark in violation of the statute. *Curtin v. United Trademark Holdings, Inc.*, 137 F.4th 1359, 1367 (Fed. Cir. 2025) (citing *Lexmark Int'l, Inc. v.*

Static Control Components, Inc., 572 U.S. 118, 129-134 (2014)), *cert. denied*, __ U.S. __ (Apr. 20, 2026) (No. 25-435); *Corcamore*, 978 F.3d at 1304-07.

In the petition for cancellation, Petitioner alleges, in relevant part, the following:

> Petitioner is in the business of the e-commerce industry. In connection with this business, Petitioner offers for sale and provides various goods including jump ropes.
>
> Petitioner is planning to file an application to register the "ZOCY" mark in connection with the goods of jump ropes.
>
> Because Petitioner is in the business of offering the goods identified in the . . . Registration, namely jump ropes, and is using the "ZOCY" mark in connection with these goods, the continued validity of the . . . Registration interferes with the Petitioner's current business. Petitioner therefore has a real interest in seeking cancellation of the . . . Registration and the entitlement to a statutory cause of action to bring this action.[11]

Addressing entitlement in its brief, Petitioner reiterates these allegations, stating:

> Petitioner sells jump ropes through e-commerce channels in direct competition with Respondent's claimed use, and is planning to file a U.S. trademark application to register the ZOCY mark for jump ropes, precisely the mark and goods covered by the . . . Registration. The continued existence of the . . . Registration directly harms Petitioner by blocking its ability to register the mark, potentially exposing it to infringement claims, and impairing its right to use a mark it has legitimately adopted. Petitioner therefore has both a real interest in this proceeding and a reasonable basis for believing it has been and will continue to be damaged.

However, Petitioner has not properly made of record any evidence that would support these allegations.[12] *See Enzo Biochem, Inc. v. Gen-Probe Inc.*, 424 F.3d 1276,

[11] Petition for Cancellation, 1 TTABVUE 3-4.

[12] As discussed in Section I, *supra*, the evidence attached to Petitioner's brief is untimely and improperly submitted; thus, we have not considered it. *See Hole in 1 Drinks*, 2020 TTAB LEXIS 9, at *4; *see also* TBMP § 704.05(b).

1284 (Fed. Cir. 2005) ("Attorney argument is no substitute for evidence."); *In re Simulations Publ'ns, Inc.*, 521 F.2d 797, 798 (CCPA 1975) ("Statements in a brief cannot take the place of evidence."). Again, the record here consists only of Respondent's involved registration file and the parties' pleadings. And Respondent's answer does not contain any admissions that would establish Petitioner's entitlement to a statutory cause of action. On the contrary, Respondent specifically denies Petitioner's allegations concerning entitlement.[13]

Generally, the requirement to establish an entitlement to a statutory cause of action is "a low threshold, intended only to ensure that the plaintiff has a real interest in the matter, and is not a mere intermeddler." *Univ. of Ky. v. 40-0, LLC*, No. 91224310, 2021 TTAB LEXIS 68, at *14. Nonetheless, given Petitioner's failure to provide any evidence of its entitlement to a statutory cause of action, let alone establish a preponderance of the evidence, we find Petitioner unsuccessful in crossing even that low threshold. *See, e.g.*, *Melwani v. Allegiance Corp.*, No. 91190682, 2010 TTAB LEXIS 443, at *20 ("[O]pposer does not have standing in this proceeding because there is neither an admission of standing by applicant nor record evidence that otherwise establishes opposer's standing.").

Petitioner's failure to establish its entitlement to a statutory cause of action is, by itself, a sufficient basis to deny the petition for cancellation. *See Curtin*, 137 F.4th at 1371-1372 (affirming Board's dismissal of an opposition based on lack of entitlement alone); *Lumiere Prods., Inc. v. Int'l Tel. & Tel. Corp.*, No. 91066857, 1985 TTAB

[13] Respondent's Answer, 5 TTABVUE 2, 4.

LEXIS 42, at *3 (dismissing opposition based on opposer's lack of standing). We therefore do not reach the substance of Petitioner's fraud and nonuse claims.[14]

Decision: The petition for cancellation of the mark ZOCY is **denied**.

[14] We note that, even if Petitioner had proved its entitlement to a cause of action, the limited evidence properly of record does not prove any of the elements of the claims of fraud or nonuse. Thus, Petitioner's claims must fail on that basis as well. *See Boyds Collection, Ltd. v. Herrington & Co.*, No. 92032146, 2003 TTAB LEXIS 11, at *11 ("Because petitioner bears the burden of proof, it is axiomatic that without admissible evidence, it cannot prevail."); *Lumiere Prods.*, 1985 TTAB LEXIS 42, at *3 (noting that opposition would have failed on the merits even if standing had been proved). The record does include the specimens of use that Respondent submitted in support of registration, which Petitioner alleges are "mockup specimens, not genuine evidence of use in U.S. commerce." Petitioner's Brief, 12 TTABVUE 10. Petitioner argues that a visual examination of the specimens themselves shows that they are mockups and lists the reasons it believes that they do not show actual use in commerce. *Id.* But the specimens by themselves, without evidence in support of Petitioner's allegations, are insufficient to prove that the mark was not in use in commerce or that Respondent engaged in fraud to obtain registration.