

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT
OF THE TTAB

Mailed:
Feb. 26, 2004

Paper No. 22
Bottorff

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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Little Scientists Franchise Corp.

v.

Zorix International, Inc.
—————

Opposition No. 91116136
to application Serial No. 75/479,357
filed on May 4, 1998
—————

Francis J. Duffin of Wiggin & Dana LLP for Little Scientists Franchise Corp.

Joseph P. Titterington of Dunlap, Coddling & Rogers, P.C. for Zorix International, Inc.
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Before Walters, Bucher and Bottorff, Administrative Trademark Judges.

Opinion by Bottorff, Administrative Trademark Judge:

Applicant seeks registration on the Principal Register of the mark YOUNG SCIENTIST (in typed form) for goods identified in the application, as amended, as "scientific toys, namely, toy telescopes, toy microscopes, toy

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electronic kits and other toy educational kits comprised of slides, cassettes and the like," in Class 28.¹

Opposer filed a timely notice of opposition to registration of applicant's mark. As its ground of opposition, opposer alleged that applicant's mark, as applied to applicant's goods, so resembles opposer's previously-used and registered mark LITTLE SCIENTISTS as to be likely to cause confusion, to cause mistake, or to deceive. Trademark Act Section 2(d), 15 U.S.C. §1052(d). Applicant filed an answer by which it denied the salient allegations of opposer's claim.

Neither party submitted any evidence or testimony during trial. Opposer filed a brief on the case, but applicant did not. Neither party requested an oral hearing. We dismiss the opposition, because opposer has failed to present any evidence to establish either its standing to oppose or its Section 2(d) ground of opposition.

Opposer acknowledges in its brief that it did not submit any testimony or other evidence during its testimony period. However, opposer asserts in its brief that it is the owner of eight registrations, four of the mark LITTLE SCIENTISTS for goods and services in various classes and four of the mark LITTLE SCIENTISTS A HANDS-ON APPROACH TO

¹ Serial No. 75/479,357, filed May 4, 1998. The application is based on applicant's asserted bona fide intention to use the mark in commerce. Trademark Act Section 1(b), 15 U.S.C. §1051(b).

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LEARNING & Design for goods and services in various classes. Opposer also asserts that copies of these registrations are attached to its brief, and that "[a]s the copies of the registrations are copies of public record documents, it is submitted that Board practice does not require that these be authenticated." (Brief at 3).

No such copies are attached to opposer's brief. Even if they had been attached, however, they would not be evidence of record merely by virtue of such attachment.² Exhibits attached to briefs are given no consideration unless they were properly made of record at trial. See TBMP §704.05(b)(2d ed. June 2003) and cases cited therein. Moreover, and contrary to opposer's assertion (quoted above), registrations owned by a party to an opposition proceeding will be considered as evidence only if their

² Additionally, opposer is not entitled to rely on seven of the eight registrations it asserts in its brief, because those registrations were not pleaded in the notice of opposition. Opposer was required to specifically plead any registration upon which it is basing its opposition, and no consideration is given to any registration which was not specifically pleaded. See *Hard Rock Café Licensing Corp. v. Elsea*, 48 USPQ2d 1400, 1402 n.3 (TTAB 1998); see also *Riceland Foods Inc. v. Pacific Eastern Trading Corp.*, 26 USPQ2d 1883 (TTAB 1993); *Long John Silver's, Inc. v. Lou Scharf Incorporated*, 213 USPQ 263 (TTAB 1982). Trademark Rule 2.106(b)(1), 37 C.F.R. §2.106(b)(1) provides that "A pleaded registration is a registration identified by number and date of issuance in an original notice of opposition or in any amendment thereto..." The only registration identified by number in the notice of opposition is Registration No. 2,156,588. Opposer's allegation in paragraph 6 of the notice of opposition that it is the owner of "a number of" federal registrations does not suffice to make any such other registration a "pleaded registration" upon which a Section 2(d) claim may be based. *Hard Rock Café Licensing Corp.*, *supra*.

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status and title has been established. An opposer may make its registrations of record by attaching status and title copies (prepared by the Office) to its notice of opposition,³ by submitting such status and title copies via notice of reliance filed during its assigned testimony period, or by introducing copies of the registrations as exhibits to the testimony deposition of a witness who testifies competently as to the status and title of the registrations. See Trademark Rule 2.122(d), 37 C.F.R. §2.122(d); see also TBMP §704.03(b)(1)(2d ed. June 2003) and cases cited therein. Opposer failed to make its registrations of record by any of these means.

In view thereof, and because opposer has failed to present any other evidence, we find that opposer has failed to prove its case.

Decision: The opposition is dismissed.

³ The copy of Registration No. 2,156,588 attached to opposer's notice of reliance is not a status and title copy.