

**THIS DISPOSITION IS  
NOT CITABLE AS  
PRECEDENT OF THE TTAB**

Mailed:  
November 1, 2006  
Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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Eugene R. Burkard

v.

Ga. Peach Buns, Inc.

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Opposition No. 91161120  
to Serial No. 76550318

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Susan B. Meyer of Gordon & Rees LLP for Eugene R. Burkard.

Crystal R. Ferrier of Ferrier & Ferrier, P.C. for Ga. Peach  
Buns, Inc.

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Before Quinn, Bucher and Kuhlke, Administrative Trademark  
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Ga. Peach Buns, Inc. seeks registration on the Principal Register of the mark **PEACH BUNS** (*in standard character format*) for goods identified in the application as "clothing, namely, swimwear, wraps, tops, coverups, skirts, shorts [and] dresses" in International Class 25.<sup>1</sup>

Eugene R. Burkard has opposed registration, asserting that applicant's mark, when used in connection with applicant's goods, so resembles opposer's previously used mark, **BUNS**, also registered by opposer in connection with

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<sup>1</sup> Application Serial No. 76550318 was filed on September 22, 2003 based upon applicant's allegation of first use anywhere and use in commerce at least as early as September 30, 1997.

"underwear pants for men and women"<sup>2</sup> as to be likely to cause confusion, to cause mistake or to deceive under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d). Applicant has denied the salient allegations in the notice of opposition.

By operation of the rules, the record includes the pleadings and the file of the opposed application. In support of his case, opposer made of record via a Notice of Reliance filed on April 13, 2005 the status and title copy of his claimed registration, and then with a Supplemental Notice of Reliance filed on June 24, 2005, he provided selected portions of applicant's responses to opposer's written discovery requests. As its case in chief, applicant submitted the testimony of applicant's founder and President, Miranda Music Smith, taken on August 31, 2005 along with the exhibits thereto. The parties have fully briefed the case.

Applicant is a small company having its primary place of business in Brunswick, Georgia. Ms. Smith, founder and President of Ga. Peach Buns, Inc., has long been involved in swimwear and fashion apparel. In September 1997 she chose **PEACH BUNS** as the mark for her swimwear and other apparel.

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<sup>2</sup> Registration No. 1023313 issued to Brawn of California on October 21, 1975 claiming first use anywhere and first use in commerce at least as early as December 13, 1974. The records of the Assignment Branch of the United States Patent and Trademark Office (USPTO) show an assignment to Mr. Burkard as of August 7, 1986, at Reel 0557 / Frame 0529.

Opposer alleges in his Notice of Opposition that his mark " ... is recognized by a significant portion of the relevant public as identifying the products of opposer ...." However, he has proffered no testimony or other evidence about his usage. Moreover, applicant provided no information or admissions in support of opposer's complaint in its discovery responses. Inasmuch as the burden of proof in this proceeding is on the opposer, he cannot prevail when he fails to introduce evidence in support of his claims. Hester Industries Inc. v. Tyson Foods, Inc. 2 USPQ2d 1646 (TTAB 1987). Although opposer also claimed the **BUNS** registration, according to the records of the USPTO, this registration has been canceled under Section 8 of the Act. A canceled registration is not evidence of anything except that it issued, and hence, we have given it no evidentiary effect. See Action Temporary Services Inc. v. Labor Force Inc., 870 F.2d 1563, 10 USPQ2d 1307, 1309 (Fed. Cir. 1989) and TBMP § 704.03(b)(1)(A)(2d ed. rev. 2004). Accordingly, the opposition must be dismissed. See Levi Strauss & Co. v. R. Josephs Sportswear Inc., 28 USPQ2d 1464, 1471 (TTAB 1993), *recon. denied*, 36 USPQ2d 1328, 1330 (TTAB 1994).

*Decision:* Judgment is hereby entered against opposer, and the opposition is dismissed with prejudice.