

**THIS OPINION IS NOT A  
PRECEDENT OF THE T.T.A.B.**

Mailed:  
May 24, 2007

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**Trademark Trial and Appeal Board**

Yolo Sportswear, LLC  
v.  
Matthew Grossman

Opposition No. 91165787  
to application Serial No. 76573605  
filed on January 30, 2004

Mark G. McCreary, of Fox Rothschild LLP for Yolo Sportswear, LLC

Afschineh Latifi, of Tucker & Latifi, LLP for Matthew Grossman.

Before Grendel, Cataldo, and Wellington,  
Administrative Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

Matthew Grossman filed an intent-to-use application for the mark YOLO - YOU ONLY LIVE ONCE, in standard character form, for "jewelry, namely, rings, earrings, bracelets, necklaces, pendants, cuff links and watches" in International Class 14.<sup>1</sup>

Yolo Sportswear, LLC (hereinafter, "opposer") opposed the registration of applicant's mark on the ground of priority of use and likelihood of confusion in accordance

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<sup>1</sup> Application Serial No. 76573605, filed January 30, 2004.

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with Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d). Opposer pleads ownership of an application for the mark, YOLO SPORTSWEAR,<sup>2</sup> for use on a variety of clothing articles. Opposer's application has been suspended by the Trademark Office because of a potential likelihood of confusion based on applicant's prior-filed application involved herein. Opposer also alleges common law rights in the mark, YOLO YOU ONLY LIVE ONCE, since 1996 for use on the same goods recited in its application. Opposer also pleads common law rights in the aforesaid marks as used in connection with the "offering for sale to the public of jewelry," as early as 1997.

Applicant, in his answer, denied the salient allegations of the claim and asserted several "affirmative defenses."<sup>3</sup>

Only opposer has submitted evidence and a brief on the case. Specifically, opposer submitted the trial testimony deposition of Karen E. Forster, opposer's Vice President and Secretary, with accompanying exhibits.<sup>4</sup> One of the exhibits

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<sup>2</sup> Application Serial No. 78376061, filed March 1, 2004.

<sup>3</sup> Included in his affirmative defenses, Mr. Grossman avers that opposer "fails to state a claim for which relief may be granted." The Board does not construe this statement as a motion to dismiss because no actual motion or brief in support thereof was filed by Mr. Grossman. As to the other affirmative defenses, they are deemed to have been waived in view of applicant's failure to submit any evidence or a brief.

<sup>4</sup> By operation of the rules, the record also includes the pleadings and the subject application.

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is a copy of opposer's application for the mark, YOLO SPORTSWEAR.

Based on applicant's inaction herein, the Board contacted applicant's counsel to determine whether applicant still had an interest in this proceeding. On May 18, 2007, applicant's counsel, Afschineh Latifi, Esq., informed the Board that applicant was no longer interested in pursuing this matter or defending his application. The Board does not construe counsel for applicant's statement as an abandonment of the application and no such abandonment is on file with the Board. And, we are cognizant of the burden that remains with opposer, namely, establishing its pleaded case (in this case, its standing and Section 2(d) ground of opposition) by a preponderance of the evidence. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1848 (Fed. Cir. 2000). However, applicant's stated lack of interest allows the Board to provide the following succinct explanation of our decision, without providing a complete recitation of findings of fact and analysis in reaching the decision.

Because opposer has an application that may be refused registration pending the outcome of this proceeding, and its likelihood of confusion claim is not frivolous, we find that opposer has established its standing to oppose registration of applicant's mark. *Id.*; see also *Lipton Industries, Inc.*

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*v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982). Opposer has established its priority because it has established uncontroverted first use and use in commerce dates in 1996 that predate applicant's January 30, 2004 filing date, the only date upon which applicant may rely herein.

Based on the record before us, including the uncontroverted deposition testimony submitted by opposer, we find that opposer has established by a preponderance of evidence that there is a likelihood of confusion between opposer's pleaded marks and applicant's mark for the parties' respective goods.

Decision: The opposition is sustained and registration to applicant is refused.