

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed: March 31, 2008  
PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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GMA Accessories, Inc.

v.

The Black & Decker Corporation

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Opposition No. 91166381  
to application Serial No. 78449003  
filed on July 12, 2004

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John P. Bostany of The Bostany Law Firm for GMA Accessories,  
Inc.

William G. Pecau and Rachel M. Hofstatter of Steptoe &  
Johnson LLP for The Black & Decker Corporation.

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Before Hairston, Walters and Walsh, Administrative Trademark  
Judges.

Opinion by Hairston, Administrative Trademark Judge:

An application has been filed by The Black & Decker Corporation (applicant) to register the mark CHARLOTTE (in standard character form) for "metal door hardware, namely, knobs, levers, lever sets, handles, handle sets, dead bolts, keys and key blanks; non-electric metal door bells; metal door knockers; metal door stops; non-magnified metal door

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viewers; metal door hinges; metal door kick plates; metal house address numbers" in International Class 6.<sup>1</sup>

Registration has been opposed by GMA Accessories, Inc. (opposer). Opposer alleges that applicant's mark, when applied to applicant's goods so resembles opposer's previously used and registered mark CHARLOTTE for "sacks and bags, namely, handbags made of textiles and beads,"<sup>2</sup> as to be likely to cause confusion.

Applicant, in its answer, denied the salient allegations of the notice of opposition.

The record consists of the pleadings and the file of the involved application. Opposer submitted notices of reliance on a status and title copy of its pleaded Registration No. 2217341, a United States Patent and Trademark Office (USPTO) assignment record for Registration No. 1135037 (this registration was not pleaded herein), and two excerpts from printed publications.<sup>3</sup>

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<sup>1</sup> Serial No. 78449003, filed on July 12, 2004, based on an allegation of a bona fide intention to use the mark in commerce.

<sup>2</sup> Registration No. 2217341 issued on January 12, 1999. Although opposer pleaded ownership of several other registrations, as discussed infra at n. 3, opposer failed to make such registrations properly of record. We have not considered these registrations.

<sup>3</sup> In an order issued August 20, 2007, the Board granted applicant's motion to strike a number of materials submitted by opposer by way of notice of reliance. The materials included plain copies of registrations that did not comply with Trademark Rule 2.122(d); and photographs, invoices, hangtags and labels that are not proper subject matter for a notice of reliance.

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Neither opposer nor applicant took testimony; applicant submitted no other evidence on its behalf.

To prevail on its Section 2(d) claim, opposer must prove that it has priority, and that a likelihood of confusion exists. See, e.g., *Bose Corp. v. QSC Audio Products Inc.*, 293 F.3d 1367, 63 USPQ2d 1303, 1305 (Fed. Cir. 2002) ["[t]he burden of proof rests with the opposer ... to produce sufficient evidence to support the ultimate conclusion of [priority of use] and likelihood of confusion"]; and *Hoover Co. v. Royal Appliance Mfg. Co.*, 283 F.3d 1357, 57 USPQ2d 1720, 1722 (Fed. Cir. 2001) ["[I]n opposition proceedings, the opposer bears the burden of establishing that the applicant does not have the right to register its mark"].

Although opposer states in its brief that "plaintiff has priority over defendant" (Brief at 2), opposer does not indicate the basis for its claim of priority. We presume that opposer is relying on its ownership of pleaded Registration No. 2217341 since opposer has made of record a status and title copy of this registration.

For a status and title copy to be competent evidence of the status and title of a registration, the status and title copy must have been issued by the USPTO at a time reasonably contemporaneous with the filing of the notice of opposition. See *Marriott Corporation v. Pappy's Enterprises, Inc.*, 192

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USPQ 735 (TTAB 1976). The status and title copy of opposer's pleaded Registration No. 2217341 was prepared on July 22, 2001, more than four years prior to the filing of the notice of opposition on August 26, 2005. This is not reasonably contemporaneous with the date of filing the notice of opposition. See *Hard Rock Café International (USA) Inc. v. Elsea*, 56 USPQ2d 1504, 1511 (TTAB 2000) [status and title copies prepared three years prior to notice of opposition not reasonably contemporaneous with filing notice of opposition]. Thus, the status and title of opposer's pleaded Registration No. 2217341 are not properly proven by this copy of the registration. Furthermore, inasmuch as opposer did not offer any testimony herein, there is no testimony that the pleaded registration is owned by opposer and is valid and subsisting.

Inasmuch as opposer has not established its priority, opposer cannot prevail on its claim of likelihood of confusion.

**Decision:** The opposition is dismissed.