

THIS OPINION IS
NOT A PRECEDENT
OF THE TTAB

Mailed:
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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Classic Media, Inc.

v.

Atlantic Systems Inc.

Opposition No. 91169103 to application Serial No. 78522565
filed on November 24, 2004

Sonja Keith, Esq. for Classic Media, Inc.

Atlantic Systems Inc. (pro se).

Before Quinn, Zervas and Bergsman, Administrative Trademark
Judges.

Opinion by Zervas, Administrative Trademark Judge:

Applicant, Atlantic Systems Inc., seeks registration on
the Principal Register of the mark PHONERANGER¹ (in standard
character form) for the following goods, as amended:

"Wireless headset for use with telephones, computers,

¹ Application Serial No. 78522565, filed November 24, 2004, is based on applicant's assertion of a bona fide intention to use the mark in commerce on the identified goods under Section 1(b) of the Trademark Act, 15 U.S.C. §1051(b).

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televisions, other audio equipment and VoIP services" in International Class 9.

Opposer, Classic Media, Inc., has filed an opposition to the registration of applicant's mark. In its notice of opposition, opposer pleaded, inter alia, that it has adopted and used LONE RANGER as a trademark on a variety of goods, namely toys, books, comic books and clothing; that its use precedes the filing date of applicant's application by over 59 years; that it is the owner of the LONE RANGER trademark and character, as well as seven registrations for LONE RANGER or THE LONE RANGER; and that registration of applicant's mark will cause confusion, mistake and deception within Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). Opposer has also pleaded dilution under Section 45 of the Trademark Act, 15 U.S.C. § 1127.

Applicant has filed an answer to the notice of opposition in which it discussed opposer's allegations. Although the answer does not comport with Fed. R. Civ. P. 8(b), we construe it to be a general denial. Only opposer has introduced evidence and only opposer has filed a brief.

The record consists of the pleadings; the file of the involved application; and opposer's single notice of reliance, which submits the following:

- printouts of registration records from the Office's TESS database for six of the pleaded registrations;

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- A photocopy of a registration certificate for the one remaining pleaded registration;²
- An entry from Wikipedia for "The Lone Ranger";
- Webpages from "The Museum of Broadcast Communications" website;
- Webpages from unknown sources;
- Webpages from amazon.com; and
- A copy of the September 2006 issue of "The Silver Bullet," identified as "The Official Newsletter For Lone Ranger Fans."

We consider the admissibility of opposer's evidence, beginning with the TESS printouts of registration records and the copy of the registration certificate. Trademark Rule 2.122(d), 37 C.F.R. § 2.122(d), was recently amended to allow for the filing of TESS copies of registrations to establish the status and title of registrations owned by a party. Opposer, however, filed this case prior to the effective date of the recent amendments to Trademark Rule 2.122(d). Thus, Trademark Rule 2.122(d), as recently amended, is inapplicable here.

It was therefore incumbent on opposer, who sought to make its registrations of record under the notice of

² Opposer also submitted a photocopy of two registration certificates for two unpleaded sensory marks, which it states in its notice of reliance belong to opposer. Because applicant was not otherwise given fair notice of opposer's reliance on these registrations, and because these two registrations were not properly made of record, see discussion *infra*, we give no further consideration to these registrations.

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reliance procedure, to comply with the requirements of Trademark Rule 2.122(d) prior to its amendment, that is, to file a copy of the registration prepared and issued by the Office showing both the current status of and current title to the registration. See TBMP § 704.03(b)(1)(A) (2d ed. rev. 2004). Inasmuch as opposer has not submitted status and title copies of any registrations, none of opposer's pleaded registrations has been properly made of record. *Weyerhaeuser Co. v. Katz*, 24 USPQ2d 1230, 1232 n.2 (TTAB 1992) ("When a party seeks to introduce its own registrations under a notice of reliance, so as to benefit from the evidentiary presumptions that attach thereto pursuant to Trademark Act Sections 7(b) or 15, soft copies or T-Search printouts may not be used.").

Opposer has also not properly made of record the evidence obtained from the Internet. "Internet evidence is not proper subject matter for introduction by notice of reliance because the evidence is not self-authenticating. As the Board has stated in the past, the element of self-authentication cannot be presumed to be capable of being satisfied by information obtained and printed out from the Internet." *Alfacell Corp. v. Anticancer Inc.*, 71 USPQ2d 1301, 1302 n.3 (TTAB 2004), citing *Raccioppi v. Apogee Inc.*, 47 USPQ2d 1368 (TTAB 1998). See also TBMP § 704.08. Thus, opposer may not rely on the Internet evidence.

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Next, we address the pages from "The Silver Bullet." Inasmuch as "The Silver Bullet" is a newsletter, we do not consider it to be in general circulation among the relevant consuming public, namely, the general public. See *Carefirst of Maryland, Inc. v. FirstHealth of the Carolinas Inc.*, 77 USPQ2d 1492, 1500 (TTAB 2005), *aff'd*, 479 F.3d 825, 81 USPQ2d 1919 (Fed. Cir. 2007) (excluding newsletter because its "distribution is limited to those purchasers buying opposer's services and goods."); Trademark Rule 2.122(e). See also TBMP §704.08 and cases cited therein. Additionally, opposer has not offered any evidence to show that its newsletter is in general circulation. See *Carefirst*, 77 USPQ2d at 1500 ("In case of reasonable doubt as to whether printed publications submitted by notice of reliance under 37 CFR § 2.122(e) are 'available to the general public in libraries or of general circulation among members of the public or that segment of the public which is relevant under an issue' in the proceeding, the burden of showing that they are so available lies with the offering party.") Thus, the pages are not from a printed publication as contemplated by Trademark Rule 2.122(e) and may not be admitted into evidence through the notice of reliance procedure.

Even if we were to consider this newsletter as properly admitted into evidence, opposer would not prevail in this

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proceeding; the newsletter is dated September 2006, which is approximately two years after the filing date of applicant's application.

Thus, for the reasons discussed above, opposer has not properly introduced any evidence into the record to establish its standing or a prima facie case of priority, likelihood of confusion or dilution. Opposer, as the plaintiff herein, bears the burden of proof with respect to its claims of priority of use, likelihood of confusion and dilution. 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"); *Sanyo Watch Co., Inc. v. Sanyo Elec. Co., Ltd.*, 691 F.2d 1019, 215 USPQ 833, 834 (Fed. Cir. 1982) ("[a]s the opposer in this proceeding, appellant bears the burden of proof which encompasses not only the ultimate burden of persuasion, but also the obligation of going forward with sufficient proof of the material allegations of the Notice of Opposition, which, if not countered, negates appellee's right to a registration"); *Clinton Detergent Co. v. Proctor & Gamble Co.*, 302 F.2d 745, 133 USPQ 520, 522 (CCPA 1962) ("[o]pposer ... has the burden of proof to establish that applicant does not have the right to register its mark"). Without any

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evidence properly of record to support its allegations, and because applicant has not made any material admissions with respect to opposer's allegations in its answer, opposer's opposition must be dismissed.

Decision: The opposition is dismissed.