

THIS OPINION IS
NOT A PRECEDENT
OF THE TTAB

Mailed:
May 29, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

PGA Tour, Inc.

v.

Timothy J. Constantine

Opposition No. 91169260 to application Serial No. 78459125
filed on July 29, 2004

Auma N. Reggy of Troutman Sanders LLP for PGA Tour, Inc.

Timothy J. Constantine (pro se).

Before Hohein, Holtzman and Zervas, Administrative Trademark
Judges.

Opinion by Zervas, Administrative Trademark Judge:

Applicant, Timothy J. Constantine, has filed an
application (Serial No. 78459125) for registration on the
Principal Register of the mark

**WORLD GOLF
COLLECTION**

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for the following goods, as amended: "clothing, namely caps, gloves, hats, jackets, pants, rainwear, shirts, shorts, socks, sweaters, sweatshirts, t-shirts, vests, visors" in International Class 25. Applicant claims first use anywhere on January 1, 2003 and first use in commerce on January 29, 2003, and has entered a disclaimer of GOLF COLLECTION.

Opposer, PGA Tour, Inc., has filed an opposition to the registration of applicant's mark. In its notice of opposition, opposer has pleaded prior common law rights to, and its registrations for, marks incorporating the words WORLD GOLF, including WORLD GOLF CHAMPIONSHIPS, WORLD GOLF VILLAGE, WORLD GOLF FOUNDATION and WORLD GOLF HALL OF FAME, for various goods including clothing and various services; and a likelihood of confusion under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

Applicant has filed an answer in which he has denied the salient allegations of the notice of opposition.

The record consists of the pleadings; the file of the involved application; and opposer's single notice of reliance which submits one item, namely, opposer's first requests for admissions. In its notice of reliance, opposer states that applicant failed to respond to the requests for admissions. See Trademark Rule 2.120(j)(3)(i); TBMP § 704.10 (2d ed. rev. 2004).

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Applicant argues in his brief that he never received the second copy of opposer's requests for admissions after opposer's first copy thereof was returned to opposer as undeliverable; that he learned of opposer's requests for admissions only through checking the electronic database for this proceeding; and that because the requests were not properly served on him, the "'automatic admission' of 37 C.F.R. ... 2.120(j) [is] moot." Brief at p. 3.

Even if we consider the facts which opposer contends applicant has admitted in connection with his requests for admissions, and the admissions by applicant in his answer, opposer has not established key elements of its claim - the status of its registrations or common law priority. At best, we may consider applicant to have admitted only that opposer is the owner of one or more registrations for particular goods and services. See, e.g., request for admissions no. 9 ("Opposer is the owner of U.S. Trademark Registration Number 3,010,914, registered with the United States Patent and Trademark Office on November 1, 2005 for the mark WORLD GOLF HALL OF FAME & Design, in connection with 'clothing namely men's and women's shirts, sweaters, jackets, pants, socks, scarves and headwear' in International Class 25"); and ¶ 5 of applicant's answer ("Applicant acknowledges that opposer PGA Tour, Inc. and World Golf Foundation own trademarks in International Class

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025 incorporating the words 'World Golf' paired with other words such as Championships, Village, Foundation and Hall of Fame.") However, even by this evidence, opposer has not established the status of its registrations. None of opposer's requests seek an admission directed to the status of the registrations, applicant has not made any admissions regarding the status of opposer's registrations in its answer, and opposer has not submitted status and title copies of the asserted registrations. In order for priority not to be in issue with respect to opposer's claim of priority of use and likelihood of confusion based on its registrations, it was incumbent upon opposer to prove that the current status of its pleaded registrations is that such registrations are subsisting and not merely, as applicant has admitted at least through his answer, that such registrations are currently owned by opposer. See *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974). Further, regarding opposer's asserted common law rights, even if we consider applicant to have admitted Request No. 18, that is, that "Opposer offers or sells clothing under" the asserted marks, applicant has made no admission regarding priority of use by opposer, either in connection with the requests for admissions or his answer.

Accordingly, irrespective of whether confusion is likely from contemporaneous use of the marks at issue in

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connection with the respective goods and/or services of the parties, because opposer, as the party bearing the burden of proof in this proceeding,¹ has not presented testimony or introduced any other evidence during its initial testimony period as proof establishing the status of its registrations or its priority of use, it is adjudged that opposer cannot prevail on its claim of priority of use and likelihood of confusion and that the opposition must fail.

Finally, we point out that we have not considered applicant's admission that there is a likelihood of confusion in this case. Requests for admissions are a discovery device and cannot be used to elicit admissions as to the questions of law in the case. *Harco Laboratories,*

¹ It is settled that opposer, as the plaintiff in this proceeding, bears the burden of proof with respect to its claim of priority of use and likelihood of confusion. 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"]; *Hoover Co. v. Royal Appliance Mfg. Co.*, 238 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"]; *Champagne Louis Roederer S.A. v. Delicato Vineyards*, 143 F.3d 1373, 47 USPQ2d 1459, 1464 (Fed. Cir. 1998) (Michel, J. concurring); *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."]. It remains opposer's obligation to satisfy its burden of proof, regardless of whether applicant offers any evidence.

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Inc. v. The Decca Navigator Co. Ltd., 150 USPQ 813 (TTAB
1966).

Decision: The opposition is dismissed.