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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

First Pacific Insurance Brokers, Inc.
v.
Kayvanfar Nader

Opposition No. 91171202

Matthew A. Sumrow of the Law Office of Matt Sumrow for First Pacific Insurance Brokers.

Kayvanfar Nader, pro se.

Before Holtzman, Walsh and Wellington, Administrative Trademark Judges.

Opinion by Holtzman, Administrative Trademark Judge:

Applicant, Kayvanfar Nader, has filed an application to register the mark 4ALL INSURANCE SERVICES ("Insurance Services" disclaimed) for services ultimately identified as "insurance brokerage and financial services, namely retirement planning" in Class 36.[1]

[1] Serial No. 78632811; filed May 18, 2005, alleging a date of first use on July 18, 1980 and first use in commerce on July 18, 1985. The application was originally filed with a claim of acquired distinctiveness under Section 2(f) of the Trademark Act, based on five years use of the mark in commerce. The examining attorney advised

Opposer filed a notice of opposition against the application on the ground that the mark is merely descriptive of applicant's services. Opposer alleges that it is "in the business of providing a variety of insurance related services" (Opp., ¶ 2); that opposer "has registered the domain name www.4allinsuranceservices.com with the intent to use that domain name and other iterations of or variations on the descriptive term '4ALL INSURANCE SERVICES' in connection with offering insurance related services and advertising and promoting Opposer's insurance brokerage business" (Id.); and that registration of the mark would impair opposer's rights to use the term descriptively in connection with its own insurance brokerage business.

Applicant filed an answer, with exhibits, arguing the merits of opposer's claim that the mark is descriptive, and not specifically admitting or denying the allegations in the notice of opposition. See Fed. R. Civ. P. 8(b). Applicant, in effect admits that opposer has registered the domain name www.4allinsuranceservices.com (Ans., ¶ 4); but argues that opposer's website under this name does not mention "the 4all

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applicant that the Section 2(f) claim was unnecessary, stating that the mark "appeared to be" inherently distinctive, and, citing TMEP §1212.02(d), required applicant to either delete the Section 2(f) claim, or explain why it was needed. Applicant responded to the requirement by deleting the Section 2(f) claim.

Insurance services name," (Ans., ¶¶ 2,3: "...the Website of the Opposer offers numerous other services without any mention of the 4all Insurance services name. And it is merely a portal."). We construe this assertion as a general denial that opposer uses the term in connection with its insurance related services. Applicant does not even generally deny opposer's allegation that opposer is in the business of providing insurance related services. Thus, this allegation is deemed admitted. Fed. R. Civ. P. 8(d). In addition, applicant asserts that "[opposer's] registration of this domain name, which is essentially identical to our trademark, is likely to cause confusion, mistake and deception, and hence constitutes infringement of our trademarks [sic]...." (Ans., ¶ 8).

Neither party took testimony or introduced any other evidence during their respective testimony periods. Both parties have filed briefs, and both have attached exhibits to their briefs.

Before turning to the merits, there are some evidentiary matters that we need to address. To begin with, Trademark Rule 2.122(c) provides, in relevant part, that an exhibit attached to a pleading is not evidence on behalf of the party to whose pleading the exhibit is attached unless identified and introduced in evidence as an exhibit during the period for taking testimony. See TBMP § 704.05(a) (2d ed. rev. 2004). See also Hard Rock Café International (USA) Inc. v. Elsea, 56 USPQ2d 1504,

1511 (TTAB 2000). The exhibits attached to applicant's answer were never properly introduced into evidence. The exhibits are therefore not of record and have not been considered.

Further, evidentiary materials attached to a party's brief on the case can be given no consideration unless they were properly made of record during the time for taking testimony. See TBMP §§ 539 and 704.05(b) (2d ed. rev. 2004). The materials attached to the parties' briefs were not made of record during trial and have not been considered.

As a final matter, we have accorded no evidentiary value or consideration to any unsupported factual statements made by the parties in their pleadings or in their briefs, except to the extent that such statements may be considered admissions against interest. See TBMP §§ 704.06(a) and (b) (2d ed. rev. 2004). See also Schering-Plough HealthCare Products Inc. v. Ing-Jing Huang, 84 USPQ2d 1323, 1328 (TTAB 2007) (unsupported assertions in brief concerning third-party use and registration not considered); and Times Mirror Magazines, Inc. v. Sutcliff, 205 USPQ 656, 662 (TTAB 1979) (statements in answer referring to sales of applicant's magazines not considered).

Thus, the record consists of the pleadings, including any admissions made by applicant in its answer, and the file of the involved application, which is automatically of record pursuant to Trademark Rule 2.122(d).

We turn first to the issue of standing. Standing is a threshold requirement that must be established by a plaintiff in every case. The purpose of the standing requirement is to prevent mere intermeddlers from initiating proceedings. Thus, to meet this requirement, a plaintiff need only show that it has a real interest in the outcome of the proceeding. See Ritchie v. Simpson, 170 F.3d 1092, 50 USPQ2d 1023 (Fed. Cir. 1999). Opposer has neither taken any testimony nor properly introduced any evidence to prove its standing in this case. Nevertheless, we find that opposer's standing has been established by admissions made by applicant in its answer. While statements made in pleadings cannot be considered as evidence in behalf of the party making them, as we noted, they may have evidentiary value as admissions against interest by the party that made them.

Opposer's interest in this case is established by applicant's deemed admission that opposer is in the business of providing insurance related services. Further, applicant's assertion of trademark infringement is, in effect, an acknowledgement that opposer is providing the same or related services as applicant. See, e.g., Eastman Kodak Co. v. Bell & Howell Document Management Products Co., 23 USPQ2d 1878 (TTAB 1992), aff'd 994 F.2d 1569, 26 USPQ2d 1912 (Fed. Cir. 1993). Applicant seems to argue in his answer (and in his brief) that opposer is not using the term 4ALL INSURANCE SERVICES in connection with insurance services or apparently for any

services. However, in order to establish standing to oppose on the ground of descriptiveness, opposer does not need to prove use of the mark on its own services. It is only necessary that opposer has a right to use the mark in its business. See, e.g., Jewelers Vigilance Committee, Inc. v. Ullenberg Corp., 823 F.2d 490, 2 USPQ2d 2021, 2024 (Fed. Cir. 1988) ("An opposer in such case need only assert an equal right to use the mark for the goods. Proprietary rights in the opposer are not required."). This right is presumed from the fact that, as deemed admitted by applicant, opposer is engaged in the sale of the same or related services as those identified in the involved application.[2] See Eastman Kodak Co., supra; and Plyboo America Inc. v. Smith & Fong Co., 51 USPQ2d 1633 (TTAB 1999). Thus, opposer has an interest sufficient to maintain this proceeding.

We turn then to the question of whether the mark 4ALL INSURANCE SERVICES for "insurance brokerage and financial services, namely retirement planning" is merely descriptive.

Opposer argues that 4ALL INSURANCE SERVICES is the equivalent of "FOR ALL INSURANCE SERVICES"; and that the term is descriptive of at least applicant's insurance brokerage services

[2] Applicant's allegations in his answer regarding his asserted registration of 4ALL INSURANCE SERVICES as a business name in Los Angeles County, California, even if true, are not relevant to the question of whether applicant is entitled to register the term as a trademark. Furthermore, opposer's asserted violations of anti-cybersquatting laws in its use of the term as a domain name, are not relevant to the question of whether opposer has a right to use the term descriptively in its business.

in that it "encourage[s] potential customers to contact Applicant 'for all insurance services offered by Applicant.'" (Brief, p. 2.).

Applicant argues that the mark is fanciful, or at least only suggestive of his services. Applicant maintains that the alpha-numeric combination of terms makes his mark unique, and that his mark "meets all tests for inventiveness, imaginativeness, remoteness and subtlety as a suggestive mark." (Brief, p. 1.)

A term is merely descriptive within the meaning of Section 2(e)(1) if it immediately conveys knowledge of a quality, characteristic, function, feature, purpose or use of the services with which it is used. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). On the other hand, a term is suggestive if, in the context of those services, a purchaser must use imagination, thought, or some type of multi-stage reasoning to understand the term's significance. See Plyboo America Inc. v. Smith & Fong Co., 51 USPQ2d 1633 (TTAB 1999).

The question of whether a designation is merely descriptive must be determined not in the abstract or on the basis of guesswork, but in relation to the services for which registration is sought. See In re Remacle, 66 USPQ2d 1222 (TTAB 2002); and In re Engineering Systems Corp., 2 USPQ2d 1075 (TTAB 1986). Thus, in making this determination, we consider the significance or meaning of the mark, if any, as applied to the services, and we

look to the evidence of record, which in this case consists of the specimen submitted in support of registration.

Applicant provides insurance brokerage services, finding and/or helping customers to find insurance coverage.[3] In the context of applicant's insurance brokerage services, the phrase 4ALL INSURANCE SERVICES immediately and directly conveys information about the nature and purpose of those services, namely that applicant is a source for all types of insurance and insurance services.

The phrase 4ALL INSURANCE SERVICES, when heard or spoken, is the phonetic equivalent of "FOR ALL INSURANCE SERVICES." Furthermore, the term "4" when combined with "ALL INSURANCE SERVICES," with or without a space between the two terms, would not be viewed as meaning either the number "4" or the word "four." The only plausible meaning and significance of the term "4," when considered in the context of the phrase as a whole, and in relation to the services, is the preposition "FOR." Thus, the term "4" does not create any new meaning or expression or change the commercial impression of the phrase as a whole in any significant way.

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[3] We take judicial notice of the following definition of "insurance broker": "Insurance brokers bring together insurance companies and those who want insurance. They are most useful to those needing several types of insurance protection and to those whose large risks must be divided among many companies." The Columbia Encyclopedia (Columbia University Press 2004); from the website, www.credoreference.com). The Board may take judicial notice of reference works, including online reference works which exist in printed format. See In re CyberFinancial.Net Inc., 65 USPQ2d 1789, 1791 n.3 (TTAB 2002).

The plain meaning of 4ALL INSURANCE SERVICES as applied to the services establishes that the mark is merely descriptive. The specimen submitted with the application confirms this finding. The specimen consists of a printout of a page from applicant's website (www.4allinsurance.net) describing applicant's insurance brokerage services. The phrase "4 ALL INSURANCE SERVICES" appears at the top of the page followed by a listing of various insurance products, including "life insurance"; "health insurance"; "dental & vision"; "auto & motorcycle"; "mortgage, loan & refinance"; and "home & real estate." The list is followed by the statement, "FOR ALL OTHER INSURANCE PLEASE CALL FOR APPLICATION" with a phone and fax number. Below the contact numbers, the web page states, "WE DO HOMEOWNER, HO3, CONDOMINIUM, EARTHQUAKE, FIRE, LIABILITY, INSURANCE AT LOW COST, THE SAME DAY, FAX BINDER TO ESCROW, FOR IMMEDIATE CLOSING." The following wording appears on the bottom of the web page at the end of another list of insurance products "...& ALL INSURANCE PLANS COVERAGES."

It is clear from the manner of use on applicant's web page that customers and prospective customers for applicant's services would readily perceive the term 4ALL INSURANCE SERVICES as meaning "FOR ALL INSURANCE SERVICES" and they would immediately understand the descriptive meaning of the designation, as informing them that applicant can provide for all their insurance needs.

We find that 4ALL INSURANCE SERVICES, when considered as a whole, does not create a fanciful or unique impression, as applicant contends. Rather we find that customers and prospective customers for applicant's services, would without any guesswork or the exercise of any imagination, immediately recognize the descriptive meaning of 4ALL INSURANCE SERVICES in connection with the services.[4]

Decision: The opposition is sustained.

[4] To the extent that applicant has alternatively alleged as a defense in his answer (and has argued in his brief) that the mark has acquired distinctiveness, applicant offered no proof at trial as to such defense.