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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Alexandra Selection
v.
Bonton

Cancellation No. 92044108

William H. Holt, Esq. for Alexandra Selection.

Simor L. Moskowitz and Matthew J. Cuccias of Jacobson Holman
for Bonton.

Before Quinn, Hairston and Holtzman, Administrative
Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

Alexandra Selection has petitioned to cancel a
registration owned by Bonton of the mark BONBON for
"jackets, pants, trousers, shirts, skirts, pullovers,
dresses, beachwear, swimwear, shorts and jeans."¹

As grounds for cancellation petitioner alleges that the
registered mark has been abandoned due to nonuse.

Respondent, in its answer, denied the allegations of
the petition to cancel.

¹ Registration No. 1411389, issued September 30, 1986; renewed.

The record consists of the pleadings; the file of the involved registration; an official record (Ex. P-1), and respondent's responses to certain interrogatories (Ex. P-3) and requests for admissions (Ex. P-4) introduced by way of petitioner's notice of reliance.² Respondent neither took testimony nor offered any other evidence. Each party filed a main brief.

Section 14 of the Trademark Act, 15 U.S.C. §1064, allows for a petition to cancel a registration of a mark by any person "who believes that he is or will be damaged...by the registration of a mark." The party seeking to cancel the registration must prove two elements: (1) that it has standing, and (2) that there is a valid ground to cancel the registration. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000).

The standing question is an initial and basic inquiry made by the Board in every *inter partes* case. That is, standing is a threshold inquiry. Standing is an essential element of a petitioner's case which, if not proved at trial, defeats a petitioner's claim. See *Ritchie v. Simpson*, 170 F.3d 1902, 50 USPQ2d 1023 (Fed. Cir. 1999); and

² The Board, in an order dated September 29, 2006, struck certain documents on which petitioner attempted to rely in its notice of reliance, namely a declaration (Ex. P-2), and respondent's responses and objections to production requests (Ex. P-5). We hasten to add that, even if these exhibits were of record, they are irrelevant to petitioner's standing in this case; rather, they relate solely to the claim of abandonment.

Lipton Industries, Inc. v. Ralston Purina Co., 670 F.2d 1024, 213 USPQ 185 (CCPA 1982). Petitioner has failed to prove its standing in this case to be heard on its abandonment claim.

In the present case, the petition to cancel includes a proper allegation of petitioner's standing. More specifically, unnumbered paragraph 3 contains allegations relating to an application owned by petitioner wherein registration has been refused on the basis of the registration sought to be canceled. The problem is that petitioner did not introduce the relevant application papers in this regard.³

Further, respondent did not make any admissions in its answer that would excuse petitioner from having to prove, as an element of its case in chief, its standing to be heard in this proceeding. Allegations alone do not establish standing.

Petitioner failed, at trial, to take any testimony or introduce any other evidence to prove its standing to bring this cancellation proceeding. Exhibit P-1 (a French trademark assignment) relates exclusively to respondent's mark. Exhibits P-3 (responses to certain interrogatories)

³ The Board does not take judicial notice of files of applications and/or registrations, where no copies thereof are filed, and where they are not the subject of the proceeding. *Beech Aircraft Corp. v. Lightning Aircraft Co.*, 1 USPQ2d 1290 (TTAB 1986).

and P-4 (responses to certain requests for admissions) relate to the use and/or nonuse of respondent's registered mark and, thus, relate to the pleaded claim of abandonment, and not to petitioner's standing.

In sum, the record is devoid of any probative evidence to establish that petitioner is more than a mere intermeddler. Accordingly, we find that petitioner has failed to prove its standing.

Because petitioner has not proved its standing, the petition to cancel must be denied.⁴ In view thereof, we elect not to consider the merits of the pleaded ground. See *American Paging Inc. v. American Mobilphone Inc.*, 13 USPQ2d 2036 (TTAB 1989), *aff'd*, 923 F.2d 869, 17 USPQ2d 1726 (Fed. Cir. 1990); and *American Forests v. Sanders*, 54 USPQ2d 1860, 1864 (TTAB 2000).

Decision: The petition to cancel is denied for petitioner's failure to prove its standing.

⁴ Statements made in a party's brief on the case can be given no consideration unless they are supported by evidence properly introduced at trial. Thus, the lone sentence in petitioner's brief relating to petitioner's standing, namely that its application was refused on the basis of respondent's registration, remains unproven.