

8/9/00

**THIS DISPOSITION  
IS NOT CITABLE AS PRECEDENT  
OF THE T.T.A.B.**

Paper No. 23  
BAC

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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The Shark Rest. Corp.

v.

Raymond Miranda, dba Shark Bar

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Opposition No. 105,056  
to application Serial No. 75/076,035  
filed on March 19, 1996  
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Baila H. Celedonia and Kieran G. Doyle of Cowan,  
Liebowitz & Latman, P.C. for The Shark Rest. Corp.

Raymond Miranda, pro se.

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Before Cissel, Chapman and Bucher, Administrative  
Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

Raymond Miranda, dba Shark Bar, filed an application  
to register the mark SHARK BAR on the Principal Register  
for "restaurant services." The application is based on  
applicant's assertion of a bona fide intent to use the  
mark in commerce in connection with the specified  
services. The word "bar" has been disclaimed.

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The Shark Rest. Corp. has opposed registration of applicant's mark, alleging that continuously since December 3, 1986 it has operated a restaurant/bar in New York City under the mark THE SHARK BAR; that on September 25, 1996, opposer filed application Serial No. 75/171,968 for the mark THE SHARK BAR for "bar and restaurant services"; and that applicant's mark, if used in connection with the services specified in his application, would so resemble opposer's previously used mark as to be likely to cause confusion, mistake, or deception.

Applicant essentially denies the salient allegations of the notice of opposition.

The record consists of the pleadings; the file of the opposed application; the testimony, with exhibits, of Brian Hinchcliffe, president and chief executive officer of opposer's parent company<sup>1</sup>; and several notices of reliance filed by opposer. Applicant did not take any testimony or offer any evidence.<sup>2</sup> Only opposer filed a

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<sup>1</sup> Applicant did not attend the deposition of Mr. Hinchcliffe.

<sup>2</sup> Opposer stated in its brief that on October 18, 1999, it received a document from applicant titled "Rebuttal Testimony." There is no such document of record in this case. However, even if the Board had received applicant's "rebuttal" document, it would not have been considered in reaching our decision herein. Applicant's testimony period had closed in this case on August 30, 1999, and any testimony or evidence submitted by applicant outside of his testimony period would have been untimely. See

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brief. An oral hearing was not requested by either party.

Opposer submitted a notice of reliance on a status and title copy of its Registration No. 2,099,352 for the mark THE SHARK BAR for "bar and restaurant services."<sup>3</sup>

Because

opposer owns a valid and subsisting registration of its pleaded mark, the issue of priority does not arise. See *King Candy Company v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974); and *Humana Inc. v. Humanomics Inc.*, 3 USPQ2d 1696 (TTAB 1987). Moreover, through applicant's answers to opposer's first set of interrogatories (made of record by opposer through a notice of reliance) it is clear that applicant has not used his mark in commerce, and the evidence clearly proves opposer used its involved mark prior to the filing date of applicant's involved application.

The marks are essentially identical (the appearance of the word "THE" in opposer's mark is of no trademark significance), and the services are essentially

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Trademark Rule 2.121(a)(1). Furthermore, the rebuttal testimony period is for the plaintiff (opposer), not the defendant (applicant). See Trademark Rule 2.121(b)(1).

<sup>3</sup> Registration No. 2,099,352 issued September 23, 1997 (from application Serial No. 75/171,968 pleaded by opposer). The word "bar" is disclaimed. The claimed date of first use is December 3, 1986.

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identical. We therefore find that there is a likelihood of confusion in this case where the identical mark is used by both opposer and applicant in connection with the same services. See *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

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Decision: The opposition is sustained, and registration to applicant is refused.

R. F. Cissel

B. A. Chapman

D. E. Bucher  
Administrative Trademark Judges,  
Trademark Trial and Appeal Board