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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Sansegal Sportswear, Inc.
v.
Tim Allyn Patterson

Opposition No. 114,437
to Application No. 75/531,286
filed on July 6, 1998

Grant R. Clayton and Bretton L. Crockett of Clayton,
Howarth & Cannon for Sansegal Sportswear, Inc.

Stephen T. Sullivan and Tish L. Berard of Sullivan Law
Group for Tim Allyn Patterson.

Before Seeherman, Quinn and Walters, Administrative
Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Sansegal Sportswear, Inc. filed its opposition to
the application of Tim Allyn Patterson to register the
mark MUSCLE WITH ATTITUDE for "men's clothing, namely

pants, shirts, undergarments, hats and neckties" in International Class 25.¹

As grounds for opposition, opposer asserts that applicant's mark, when applied to applicant's goods, so resembles opposer's previously used and registered marks ATTITUDE² and ATTITUDE ANYWEAR³ for "clothing and sportswear, namely jackets, sweatsuits, shorts, swimwear, shirts, T-shirts, sweatshirts, hats and tanktops" as to be likely to cause confusion, under Section 2(d) of the Trademark Act.⁴

Applicant, in its answer, denied the salient allegations of the claim and asserted acquiescence, unclean hands, fraud and abandonment as affirmative defenses.

The record consists of the pleadings and the file of the involved application. Only opposer filed a brief on the case and a hearing was not requested.

¹ Application Serial No. 75/513,286, filed July 6, 1998, based upon an allegation of a bona fide intention to use the mark in commerce in connection with the identified goods.

² Registration No. 1,915,006, issued August 29, 1995, in International Class 25. [Sections 8 and 15 affidavits accepted and acknowledged, respectively.]

³ Registration No. 1,885,003, issued March 21, 1995, in International Class 25. [Sections 8 and 15 affidavits accepted and acknowledged, respectively.]

⁴ Opposer also alleged ownership of two trademark applications that have since been abandoned.

By a consented motion, approved by the Board on November 2, 2000, trial dates were extended. Opposer's testimony period closed on November 28, 2000, applicant's testimony period closed on January 27, 2001, and opposer's rebuttal testimony period closed on March 13, 2001. Neither party presented any evidence during either of the main testimony periods; opposer submitted evidence under several several notices of reliance during its rebuttal testimony period. Because applicant did not present any testimony or evidence during its trial period, the evidence submitted by opposer cannot be considered to be proper rebuttal. Rather, it appears to be a last minute attempt by opposer to present its main case. This is unacceptable and the evidence has not been considered.⁵

Opposer has not established any of the elements of its claim and, thus, cannot prevail in this proceeding.

Decision: The opposition is dismissed.

⁵ Even if this evidence had been considered to be properly of record, it does not establish opposer's claims. In particular, there is no evidence establishing opposer's standing, its ownership of the pleaded trademarks or registrations therefor, or its use of the pleaded marks. Neither priority nor likelihood of confusion could be determined from this evidence.