

**THIS DISPOSITION IS
NOT CITABLE AS
PRECEDENT OF THE TTAB**

Mailed:
September 6, 2006
Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Chestnut Petroleum Distributors, Inc.

v.

Lotta Java, Inc.

Opposition No. 91158746
against Serial No. 76388836

Meichelle R. MacGregor of Cowan Liebowitz & Latman, P.C. for
Chestnut Petroleum Distributors, Inc.

Teresa D. Walker for Lotta Java, Inc.¹

Before Quinn, Bucher and Rogers, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Lotta Java, Inc. seeks registration on the Principal Register of the mark **LOTTA JAVA** (*in standard character format*) for services recited in the application, as amended, as "restaurant services, namely, a gourmet coffee and pastry shop" in International Class 43.²

Registration has been opposed by Chestnut Petroleum Distributors, Inc., a New York State corporation. As its

¹ John L. Deal and the law firm of Williams Mullen Hofheimer Nusbaum withdrew as applicant's counsel as of February 2005.

² Application Serial No. 76388836 was filed on March 28, 2002 based upon applicant's allegation of first use anywhere and use in commerce at least as early as May 1, 2001; no claim is made to the word JAVA apart from the mark as shown.

ground for opposition, opposer asserts that applicant's mark, when used in connection with applicant's services, so resembles opposer's previously used mark, **LOTTA JAVA**, used by opposer in connection with restaurant services in the nature of gourmet coffee and pastry cafés, as to be likely to cause confusion, to cause mistake or to deceive under Section 2(d) of the Lanham Act.

Applicant, in its answer, has denied the salient allegations in the notice of opposition.

The Record

By operation of the rules, the record includes the pleadings and the file of the opposed application. In support of its case, opposer made of record the trial testimony of Ahmad ("Mickey") Jamal, the President and CEO of Chestnut Petroleum, taken on November 15, 2004 ("Jamal Transcript"), and exhibits thereto. Applicant has not submitted any trial testimony or other evidence in this proceeding, and did not file a brief.

Factual Findings

Opposer first used the mark LOTTA JAVA on February 10, 1999 in connection with restaurant services in the nature of gourmet coffee and pastry cafés at three different locations in New York State. Opposer provides gourmet coffee and

pastries for sale to the general public at its LOTTA JAVA stations, which are located in convenience stores, service station marts, high schools, colleges, hospitals, cafés, delis, restaurants and a bowling alley. Jamal Transcript pp. 7, 8, 14, 16 - 20, 35, 36 - 41. Opposer has continuously provided restaurant services under the LOTTA JAVA mark since that time. Jamal Transcript pp. 14, 36, 63 - 64. As of August 2004, there were approximately eighty LOTTA JAVA stations in New York, New Jersey and Connecticut. Jamal Transcript pp. 8, 41.

Opposer's LOTTA JAVA mark is prominently displayed on the overhead valance at opposer's LOTTA JAVA stations, as well as on equipment, cups, condiments, coffee pots and containers, brewing machines, cappuccino machines and pot holders at



LOTTA JAVA stations. Jamal Transcript pp. 9, 10, 40 - 41, 51 - 52, 54 - 55, 67 - 69.

While applicant has alleged a first use date of May 1, 2001, it has submitted no evidence in support of its first use date or the use of its mark in commerce.

Opposer has standing

Opposer's standing is a threshold inquiry made by the Board in every *inter partes* case. In Ritchie v. Simpson, 170 F.3d 1092, 50 USPQ2d 1023 (Fed. Cir. 1999), the Federal Circuit enunciated a liberal threshold for determining standing, i.e., whether one's belief that one will be damaged by the registration is reasonable and reflects a real interest in the case. See also Jewelers Vigilance Committee Inc. v. Ullenberg Corp., 823 F.2d 490, 2 USPQ2d 2021, 2023 (Fed. Cir. 1987); and Lipton Industries, Inc. v. Ralston Purina Company, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982). The entire record herein, including the testimony and exhibits establishing opposer's use, supports the proposition that Chestnut Petroleum has pleaded and demonstrated facts sufficient to show a personal interest in the outcome of the case, and hence its standing.

Priority

We turn then to the issue of priority in relation to the services on which opposer has alleged prior use. All of the evidence in the record shows that opposer has used its LOTTA JAVA mark since prior to the filing date of applicant's application, which in the absence of other evidence, is the earliest date on which applicant can rely.

Likelihood of Confusion

We turn, then, to the issue of likelihood of confusion. Our determination of likelihood of confusion is based upon our analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. See In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

Inasmuch as the services are identical, and the marks are identical, and applicant has put forward neither evidence nor argumentation as to any of the other du Pont factors, we find there is a likelihood of confusion herein, and sustain the opposition.

Decision: We hereby sustain the opposition.