

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Skoro

Opposition No. 99,336

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB
MARCH 10, 00

Daniel R. Gray

v.

Brian Weiss, and
Cleveland R.O.W.K.S.,
Inc.

Before Hanak, Hohein and Wendel, Administrative Trademark
Judges.

This case now comes up on opposer's motion to amend its
notice of opposition¹ and its renewed motion for summary
judgment, filed July 27, 1998, based upon the invalid
assignment of the intent-to-use application, Serial No.
74/802,467, for the mark, CLEVELAND ROCKS. Inasmuch as the
motion to amend the notice of opposition is unopposed, it is
therefore granted.

Turning to the renewed motion for summary judgment,
opposer recounts as undisputed facts that applicant, Brian

¹ The amendment is made to add the grounds of an invalid
assignment of the application, which had previously been raised

Opposition No. 99,336

Weiss, assigned the intent-to-use application Serial No. 74/802,467 on June 22, 1995, to applicant, Cleveland R.O.W.K.S., Inc.; that applicant had not filed a verified statement of use prior to the assignment; and that Brian Weiss stated in his deposition and answers to interrogatories that at the time he applied for the registration, he did not plan on producing any items bearing the trademark and did not have any business venture he was pursuing. Opposer further states that the evidence establishes that Brian Weiss had not personally done business under the mark, had no business plan or licensee, and has not presented any evidence that applicant Weiss assigned a business appurtenant to the intent-to-use application at the time the application was assigned. Opposer thus argues that the assignment of the intent-to-use application prior to filing a verified statement of use is in violation of 15 U.S.C. § 1060, which voids the application and any resulting registration as well. Clorox Co. v. Chemical Bank, 40 USPQ2d 1098 (TTAB 1996).

In support thereof, opposer provided as exhibits to its motion for summary judgment, and relies on herein, excerpts from applicant Weiss's deposition; a copy of Weiss's responses to opposer's interrogatories; applicant Cleveland R.O.W.K.S.' articles of incorporation; and a copy of the

in a motion for summary judgment filed March 20, 1998, but denied

Opposition No. 99,336

assignment cover sheet and application file. This evidence confirms that applicant Weiss assigned the trademark application in contravention of 15 U.S.C. § 1060.

Applicants have not filed a response to opposer's pending motion. In view thereof, the motion is treated as conceded.² Accordingly, summary judgment is granted in favor of opposer. Fed. R. Civ. P. 56(c) and (e). The opposition is accordingly sustained and registration to applicants is refused.

E. W. Hanak

G. D. Hohein

H. R. Wendel
Administrative Trademark
Judges, Trademark Trial
and Appeal Board

because it was an unpleaded issue.

² If the nonmoving party fails to file a brief in opposition to a motion, the motion normally will be granted by the Board as conceded. See, Trademark Rule 2.127(a), and TBMP Section 502.03.