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**This Opinion is Not
Citable as Precedent
of the TTAB**

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Jomandi Productions, Inc.

v.

Thomas W. Jones, II, Diana Jones Stevens, and Andrea Fuller-
Ruffin

Cancellation No. 92041105

Auma N. Reggy and Michael D. Hobbs, Jr. of Troutman Sanders
LLP for Jomandi Productions, Inc.

Thomas W. Jones, II, Diana Jones Stevens and Andrea Fuller-
Ruffin, pro se.

Before Hairston, Rogers and Drost,
Administrative Trademark Judges.

Opinion by Rogers, Administrative Trademark Judge:

Thomas W. Jones, II, Diana Jones Stevens and Andrea Fuller-Ruffin [respondents] registered the mark JOMANDI for services identified as "production of theatrical shows, audio recordings, video recordings, television shows, and movies," in Class 41. The registration issued October 23, 2001, based on an application claiming first use of the mark, and first use of the mark in commerce, for the identified services, as of October 25, 1978.

Jomandi Productions, Inc. [petitioner] asserts in its petition to cancel that it is a non-profit corporation; that respondents were founding members of petitioner and are former members of petitioner's Board of Directors; that respondents "were not individually or collectively authorized by Petitioner to file for or obtain" the involved registration; that petitioner "is the owner and the first and senior user" of the registered mark, since on or about October 25, 1978; and that petitioner uses the mark in connection with providing firms, organizations and individuals with consultation and other related assistance in the development and promotion of the performing arts through workshops, seminars, publications and educational productions within the mass communications media" as well as "promotion and advancement of art and of artistic principles co-joined with the training and development of artists." Petitioner asserts it will be damaged by continuing registration of the mark in respondents' names and prays that it be cancelled.

Respondents essentially deny petitioner's claim of ownership of the registered mark, explaining that they are "the surviving members of the Jones family," created the mark as an amalgam of certain family names, "are the legitimate owners ... [and] senior users and hold all rights to its usage." Respondents assert they first used the mark

even prior to the date of first use recited in their registration and by petitioner in the petition to cancel, specifically, the mark "was coined in June of 1978" and first used in August of 1978. Respondents assert "the family retained ownership of the name" which "always retained rights to ownership" and it is petitioner that was "granted permission" to use the mark and it must obtain consent from the family to continue to use the mark. Respondents deny petitioner's allegation that it has standing to seek cancellation.

Nothing further was filed with the Board until petitioner filed a notice of reliance during its assigned testimony period. All that petitioner introduced thereby were copies of its requests for admissions from respondents and petitioner's statement that no responses were provided. Petitioner filed a brief on the case, but respondents did not. Neither side requested time for oral argument.

Except for the first two, which relate only to the addresses of the parties, all the requests for admissions are set forth below:

3.

Registrants were founding members of Petitioner, Jomandi Productions, Inc.

4.

Registrants were former members of the Board of Directors of Petitioner, Jomandi Productions, Inc.

5.

Registrants did not individually or collectively create an oral license agreement with Jomandi Productions, Inc. for use of the JOMANDI Mark.

6.

Registrants did not individually or collectively create a written license agreement with Jomandi Productions, Inc. for use of the JOMANDI Mark.

7.

Registrants did not challenge Petitioner's use of the JOMANDI Mark between 1978 and 2002.

8.

Any rights, title and interest in and to the JOMANDI Mark that Registrants claim, were assigned to Jomandi Productions, Inc. at the time of incorporation of Jomandi Productions, Inc.

9.

Registrants had no intention to retain any rights to use the JOMANDI Mark at the time Registrants assigned all rights in the JOMANDI Mark to Jomandi Productions, Inc.

10.

The JOMANDI Mark was adopted with the intention that, upon incorporation of Jomandi Productions, Inc., it would be used exclusively by Jomandi Productions, Inc.

11.

Prior to leaving the Board of Directors of Jomandi Productions, Inc., Registrants never intended to use the JOMANDI Mark apart from Jomandi Productions, Inc.'s use of the JOMANDI Mark.

12.

At the time of incorporation of Jomandi Productions, Inc., Registrants fully consented to Jomandi Productions Inc.'s adoption and use of the JOMANDI Mark.

13.

Registrants are no longer affiliated with Petitioner, Jomandi Productions, Inc.

14.

Registrants were not individually or collectively authorized by Petitioner to file for or obtain a registration for the JOMANDI Mark.

15.

Registrants, without consent from Petitioner, filed for and received federal registration for the mark "JOMANDI," U.S. Registration No. 2,501,078.

16.

The public has, since 1978, come to associate the JOMANDI Mark with the incorporated not-for-profit entity, Jomandi Productions, Inc.

17.

Registrants did not use the JOMANDI Mark in commerce prior to the creation of Jomandi Productions, Inc.

18.

The use of the JOMANDI Mark by Registrants is likely to cause confusion in the minds of the purchasing public with respect to Jomandi Productions, Inc.

19.

The use of the JOMANDI Mark by Registrants is likely to cause the purchasing public to believe that the services offered under such Mark are sold by, originated by, or are connected in some way with Petitioner.

20.

All rights, if any, created in the JOMANDI Mark prior to the incorporation of the not-for-profit entity Jomandi Productions, Inc., have since been fully assigned to Jomandi Productions, Inc.

21.

Jomandi Productions, Inc. has been using the JOMANDI Mark since 1978.

22.

No documents exist that reflect the existence of or reference a license agreement for the use of the JOMANDI Mark between Registrants and Petitioner.

The requests for admissions submitted by the notice of reliance include a copy of a certificate of service showing service of copies on each of the three respondents, prior to the close of discovery. Similarly, the notice of reliance includes proof of service of copies on each of the respondents.

Petitioner argues in its notice of reliance and in its brief that each of the requests for admissions is deemed admitted, by virtue of respondents having failed to file any response whatsoever. We agree and adopt the requests as findings of fact. Accordingly, we now apply the relevant law to these facts.

The constructive facts clearly establish that petitioner has standing to seek cancellation of the involved registration, that is, it has a personal interest in this proceeding and a reasonable belief that it will be damaged if the registration is not cancelled. See Ritchie v. Simpson, 170 F.3d 1092, 50 USPQ2d 1023, 1025-26 (Fed. Cir. 1999). In particular, we note requests for admission 8-10 and 16, 18 and 19.

As can be seen from the thrust of the latter three referenced requests, petitioner has approached this case as

one involving a substantive claim that it is the prior user of the registered mark and will be damaged by continued registration of the mark by respondents because there will be a likelihood of confusion or mistake by prospective users of petitioner's and respondents' services. Certainly, that is the thrust of the arguments presented in petitioner's brief.¹ Petitioner's pleading, however, does not present a claim of priority of use and likelihood of confusion under Section 2(d) of the Trademark Act. At most, the pleading presents a claim that respondents are not the owners of the registered mark. Thus, we review the constructive facts to determine whether such a claim has been proven.

The facts show: The JOMANDI mark was adopted with the intention that, upon incorporation of Jomandi Productions, Inc., it would be used exclusively by Jomandi Productions, Inc. (Request for Admission no. 10); all rights, if any, created in the JOMANDI mark prior to the incorporation of the not-for-profit entity Jomandi Productions, Inc., have since been fully assigned to Jomandi Productions, Inc.

¹ In the conclusion to its brief, petitioner also asserts that respondents' "unauthorized misappropriation of the JOMANDI Mark by the Defendants clearly constitutes trademark infringement, unfair competition and dilution," under state and federal laws, as well as being "in violation of their duty and legal obligations to act in good faith and in the best interests of the corporation."

Suffice it to say that infringement, unfair competition and dilution, as well as "violation" by respondents of any sort of fiduciary duty to petitioner, were not claims pleaded in the petition for cancellation or proved by the constructive facts

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(Request no. 20); at the time of incorporation of Jomandi Productions, Inc., respondents fully consented to Jomandi Productions Inc.'s adoption and use of the JOMANDI mark (Request no. 12); any rights, title and interest in and to the JOMANDI mark that respondents claim, were assigned to Jomandi Productions, Inc. at the time of incorporation of Jomandi Productions, Inc. (Request no. 8); respondents had no intention to retain any rights to use the JOMANDI mark at the time respondents assigned all rights in the JOMANDI mark to Jomandi Productions, Inc.; and respondents were not individually or collectively authorized by petitioner to file for or obtain a registration for the JOMANDI mark (Request no. 14).

Based on the effective admissions of the facts listed above, we conclude that petitioner has proven that respondents were not the owners of the mark that they registered and that the registration should therefore be cancelled.

Decision: The petition for cancellation is granted. The registration shall be cancelled in due course.

admitted when respondents failed to respond to petitioner's requests for admissions.