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8016-87193

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

USA Baby, Inc.,
Opposer,
v.

Robert Geisheker,
Applicant.

Marks: MY BABY'S ROOM (78/483,760)
THE CHILDREN'S ROOM (78/484,188)
MY CHILD'S ROOM (78/484,530)
MY CHILD'S ROOM and Design (78/531,507)

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10/30/06
Date *Paul W. Lee*
Attorney for Opposer

OPPOSITION NO. 91,167,999

OPPOSER'S MOTION FOR SUMMARY JUDGMENT

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DECLARATION OF RONALD A. ERIKSEN

EXHIBITS A-J

I. INTRODUCTION

Opposer, USA Baby, Inc. ("USA Baby"), hereby moves the Trademark Trial and Appeal Board (the Board) for entry of Summary Judgment pursuant to Fed. R. Civ. P. 56 on its Opposition filed against Application Serial No. 78/483,760 for the mark MY BABY'S ROOM; Application Serial No. 78/484,188 for the mark THE CHILDREN'S ROOM; Application Serial No. 78/484,530 for the mark MY CHILD'S ROOM; and Application Serial No. 78/531,507 for the mark MY CHILD'S ROOM and Design (hereinafter "Applicant's Marks"). USA Baby, respectfully submits that it is entitled to Summary Judgment because there is no issue of material fact and the undisputed evidence establishes that there is a likelihood of confusion between the Opposer's use of its marks THE BABY'S ROOM (Registration Nos. 1,634,474 and 3,031,990); THE BABY'S ROOM and Design (Registration No. 2,443,615); CHILD SPACE and Design (Registration No. 2,472,684) and CHILD SPACE (Registration No. 2,474,811) (hereinafter the "USA Baby Marks") and Applicant's Marks. In addition, the undisputed evidence shows that Applicant's Marks have and continue to dilute the USA Baby Marks. Therefore, USA Baby respectfully requests the entry of Summary Judgment sustaining its Opposition on the basis of Sections 2(d) and 43(c) of the Lanham Act.

A. STATEMENT OF UNDISPUTED FACTS

1. Robert Geisheker, (hereinafter "the Applicant"), filed Application Serial No. 78/483,760 for the mark MY BABY'S ROOM on September 15, 2004 on an intent to use basis for use in connection with "retail furniture store services featuring furniture and accessories for infants and children" in International Class 35. The application was published on September 27, 2005.

2. Application No. 78/484,188 for the mark THE CHILDREN'S ROOM was also filed by the Applicant on September 15, 2004, on an intent to use basis for "retail furniture store services featuring furniture and accessories for infants and children" in International Class 35. The application was published for opposition on September 6, 2005.

3. In addition, Applicant filed application Nos. 78/484,530 and 78/531,507 for the marks MY CHILD'S ROOM and MY CHILD'S ROOM and Design respectively on September 16, 2004 and December 13, 2004 for use in connection with "retail furniture store services featuring furniture and accessories for infants and children." Both applications specify a date of first use in commerce of December 16, 2004, and were published for opposition on August 9, 2005 and August 30, 2005, respectively.

4. USA Baby filed timely oppositions against each of the foregoing applications on the grounds that Applicant's Marks are confusingly similar to the USA Baby Marks, and that registration of Applicant's Marks has and will continue to lessen the capacity of the USA Baby Marks to identify and distinguish its services. The Applicant filed an Answer generally denying the allegations.

5. The Testimony Period has not opened prior to the filing of this Motion.

6. Applicant, Robert Geisheker, is a citizen of the United States having an address at 817 N. Industrial Drive, Elmhurst, IL 60126 and is the President of TBR, LLC also doing business as My Child's Room, an Illinois Limited Liability Company having an address at 817 N. Industrial Drive, Elmhurst, IL 60126.

7. USA Baby, Inc. is an Illinois Corporation located and doing business at 793 Springer Drive, Lombard, Illinois.

8. On February 5, 1991, USA Baby was granted U.S. Registration No. 1,634,474 for THE BABY'S ROOM mark in connection with "retail store services featuring furniture, mattresses, toys and related merchandise for infants and children." This Registration is still valid and subsisting and is now incontestable. (See Certified Copy of this Registration showing title and status attached as Exhibit A). The foregoing Registration claims a first use date in commerce of THE BABY'S ROOM mark of September 23, 1975.

9. USA Baby is the owner of Registration No. 2,443,615 for the mark THE BABY'S ROOM and Design in connection with "retail store services featuring furniture, mattresses, toys and related

merchandise for infants and children". The foregoing registration indicates that USA Baby has used THE BABY'S ROOM and Design mark in connection with these services in interstate commerce since at least as early as November 1, 1995 and was issued the aforementioned registration on April 17, 2001. (See Certified Copy of this Registration showing title and status attached as Exhibit B).

10. USA Baby is the owner of the marks CHILD SPACE and Design (Registration No. 2,472,684) and CHILD SPACE (Registration No. 2,474,811) for use in connection with "retail stores services featuring furniture for infants, children and teenagers, namely, cribs, mattresses, bunk beds, captains beds, loft beds, twin beds, desks, hutches, bookcases, entertainment units, storage units, rockers, armoires, dressers and chairs." The CHILD SPACE and Design mark and the CHILD SPACE mark were granted Registration on the Principal Register respectively on July 31, 2001, and August 21, 2001. (See Certified Copy of these Registrations showing title and status attached as Exhibits C and D). (Eriksen Decl. at ¶ 5).

11. Last, Application Serial No. 78/504,526 for the mark THE BABY'S ROOM has resulted in the recent issuance¹ of Registration No. 3,031,990 for "retail store services featuring furniture for infants, children and teenagers, namely, cribs, mattresses, bunk beds, captains beds, loft beds, twin beds, desks, hutches, bookcases, entertainment units, storage units, rockers, armoires, dressers, chairs and toys and related merchandise". The Registration indicates that the mark has been used in interstate commerce since at least as early as September 23, 1975 throughout the United States. (See Certified Copy of this Registration showing title and status attached as Exhibit E). (Eriksen Decl. at ¶ 6).

12. In its Answer to the Notice of Opposition, Applicant admits that Registration Nos. 1,634,474, 2,443,615, 2,472,684 and 2,474,811 were issued by the U.S. Patent and Trademark Office, that each are currently owned by USA Baby for use in connection with the recited services. (See Answer to Notice of Opposition attached hereto as Exhibit F at ¶ 6, 8, 9, 10).

¹ On September 27, 2005, after the instant proceeding was commenced, Application No. 78/504,526 for THE BABY'S ROOM mark was published for Opposition and Registered on the Principal Register on December 20, 2005 in connection with the aforementioned services.

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