

THIS OPINION IS NOT  
A PRECEDENT OF THE TTAB

Mailed: January 21, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

*Silent Events, Inc.*

*v.*

*Quiet Events, Inc.*

Opposition No. 91234202 (Parent Case)<sup>1</sup>

Opposition No. 91238912

*Quiet Events, Inc.*

*v.*

*Silent Events, Inc.*

Cancellation No. 92063149

Patrick G. Walker of Farris Bobango PLC,  
for Silent Events, Inc.

William R. Samuels of Scarinci Hollenbeck LLC,  
for Quiet Events, Inc.

Before Bergsman, Lynch, and Pologeorgis,  
Administrative Trademark Judges.

<sup>1</sup> Opposition No. 91234202 was consolidated with Cancellation No. 92063149 by Board order dated August 25, 2017. *See* 8 TTABVUE in Opposition No. 91234202. We sua sponte consolidate Opposition No. 91238912 with the already-consolidated proceedings because this latter opposition proceeding involves the identical parties and common or overlapping questions of law and fact. Fed. R. Civ. P. 42(a); *see also Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154, 1156 (TTAB 1991). Unless otherwise specified, all TTABVUE citations in this decision reference the docket in the parent case, i.e., Opposition No. 91234202.

Opinion by Pologeorgis, Administrative Trademark Judge:

Quiet Events, Inc. (“QEI”) has applied to register on the Principal Register (1) the standard character mark QUIET EVENTS (“EVENTS” disclaimed) for “arranging, organizing, conducting, and hosting social entertainment events” in International Class 41;<sup>2</sup> and (2) the composite mark QUIETEVENTS and design, as displayed below, for “online retail store services and telephone ordering services featuring headphones, belt clip transceivers, music players, inventory management systems, mixers, microphones, generators, batteries, LED lights, and stage lights” in International Class 35 and “rental of sound, light, and audio equipment, specifically wireless headphones with belt clip transceivers, music players, mixers, microphones, batteries, LED lights, and stage lights” in International Class 41.<sup>3</sup>



Silent Events, Inc. (“SEI”) opposes registration of both of QEI’s marks on the ground of likelihood of confusion under Section 2(d) of the Trademark Act,

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<sup>2</sup> Application Serial No. 87228747, filed on November 7, 2016, based on use in commerce under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), claiming July 1, 2012 as both the date of first use and the date of first use in commerce. This application is subject to Opposition No. 91234202.

<sup>3</sup> Application Serial No. 87228788, filed on November 7, 2016, based on use in commerce under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), claiming March 22, 2012 as both the date of first use and the date of first use in commerce as to both classes of services. The description of the mark reads as follows: “The mark consists of a cartoon face with headphones and the words ‘quietevents’ on the right of it.” Color is not claimed as a feature of the mark. This application is subject to Opposition No. 91238912.

15 U.S.C. § 1052(d). In support of its Section 2(d) claim, SEI alleges, inter alia, prior use and ownership of a registration on the Principal Register of the mark SILENT EVENTS (“EVENTS” disclaimed) for “Entertainment services, namely, arranging, organizing and conducting special events for social entertainment purposes that feature live musical concerts supplied to an audience by means of personal wireless headphones” in International Class 41.<sup>4</sup>

In its answers to the notices of opposition, QEI denied the salient allegations asserted therein. QEI also asserted the following “affirmative defenses”: (1) failure to state a claim upon which relief may be granted, (2) laches based on a prior registration issued to QEI for the mark QUIET EVENTS for “rental of headsets,”<sup>5</sup> and (3) various defenses that go to the merits of SEI’s likelihood of confusion claim. Insofar as QEI neither filed a formal motion to dismiss for failure to state a claim during the interlocutory phase of the opposition proceedings, nor argued this asserted affirmative defense in its brief, it is hereby deemed waived. *Alcatraz Media, Inc. v. Chesapeake Marine Tours Inc.*, 107 USPQ2d 1750, 1753 n.6 (TTAB 2013), *aff’d mem.*, 565 F. App’x 900 (Fed. Cir. 2014). Similarly, because QEI did not argue its laches affirmative defense in its brief, it is also deemed waived. *Swatch AG (Swatch SA) (Swatch Ltd.) v. M.Z. Berger & Co.*, 108 USPQ2d 1463, 1465 n.3 (TTAB 2013) (opposer’s

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<sup>4</sup> Registration No. 4141745, registered on May 15, 2012; renewed. The mark subject to this registration is in standard character form.

<sup>5</sup> We construe this affirmative defense as one brought under the “prior registration” or *Morehouse* defense. See *Morehouse Mfg. Corp. v. Strickland & Co.*, 407 F.2d 881, 160 USPQ 715 (CCPA 1969).

pleaded claims not argued in its brief deemed waived), *aff'd*, 787 F.3d 1368, 114 USPQ2d 1892 (Fed. Cir. 2015). With regard to the remaining “affirmative defenses,” we construe them as mere amplifications of the denials in QEI’s answers. *See Order of Songs of Italy in America v. Profumi Fratelli Nostra AG*, 36 USPQ2d 1221, 1223 (TTAB 1995).

QEI filed a petition to cancel SEI’s registration for the mark SILENT EVENTS on the ground that the mark is the generic name for the services identified in the registration.<sup>6</sup>

In its answer to the petition to cancel, SEI denied the salient allegations asserted therein, except that it admitted to the filing date and the filing basis of the underlying application of its subject registration.<sup>7</sup>

## **I. The Record**

The record includes the pleadings in all the consolidated proceedings and, by operation of Trademark Rule 2.122(b), 37 C.F.R. § 2.122(b), the application files of QEI’s involved applications and the registration file of SEI’s subject registration.

SEI has submitted the following evidence:

- SEI’s Notices of Reliance on (1) QEI’s responses to SEI’s Second Set of Interrogatories Nos. 3-4, 15, 16-18, and 20 and exhibits referenced in those responses;<sup>8</sup> (2) QEI’s responses to SEI’s Requests for Admission and

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<sup>6</sup> 1 TTABVUE in Cancellation No. 92063149.

<sup>7</sup> 15 TTABVUE 2 (¶ 3) in Cancellation No. 92063149.

<sup>8</sup> 9 TTABVUE.

corresponding exhibits;<sup>9</sup> (3) plain copies of SEI's pleaded Registration No. 4141745 and Registration No. 4451061 for the mark QUIET EVENTS purportedly owned by QEI for "rental of wireless headsets";<sup>10</sup> and (5) various materials obtained from the Internet;<sup>11</sup>

- The testimony declaration of Mr. Ryan Dowd, SEI's owner, and accompanying Exhibits A-M;<sup>12</sup> and
- A second testimony declaration of Mr. Dowd regarding the trademark policing efforts of SEI and accompanying exhibits.<sup>13</sup>

QEI has submitted the following evidence:

- The testimony declaration of William Petz, QEI's owner and CEO, and accompanying Exhibits A-O;<sup>14</sup>

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<sup>9</sup> 10 TTABVUE.

<sup>10</sup> 11 TTABVUE. Plain copies of registration certificates are incompetent to show current status and title information, as required by Trademark Rule 2.122(d)(1), 37 C.F.R. § 2.122(d)(1); *see also United Global Media Group, Inc. v. Tseng*, 112 USPQ2d 1039, 1041 (TTAB 2014). Notwithstanding and as noted above, SEI's pleaded Registration 4141745 is of record by operation of Trademark Rule 2.122(b). However, the submission of the plain copy of Registration No. 4451061 for the mark QUIET EVENTS purportedly owned by QEI for "rental of wireless headsets" under SEI's notice of reliance alone does not make that registration of record.

<sup>11</sup> 12 and 34 TTABVUE. The Board notes that SEI failed to indicate clearly the general relevance of any of the Internet evidence submitted under its notice of reliance, as required by Trademark Rule 2.122(g), 37 C.F.R. § 2.122(g). Merely stating that the material is relevant to the issues in the proceeding is insufficient. *See Barclays Capital Inc. v. Tiger Lily Ventures Ltd.*, 124 USPQ2d 1160 1164 (TTAB 2017) ("To meet th[is] requirement, the offering party should associate the materials with a specific factor relevant to a specific and pleaded claim or defense, or a specific fact relevant to determining a particular claim or defense."); *see also FUJIFILM SonoSite, Inc. v. Sonoscape Co.*, 111 USPQ2d 1234, 1236-37 (TTAB 2014) (citations omitted). However, since QEI did not object to SEI's notice of reliance on this ground and because the failure is a curable defect, such an objection is deemed waived. *Cf. In re Mueller Sports Med., Inc.*, 126 USPQ2d 1584, 1587 (TTAB 2018) (Board may consider the objection to Internet evidence waived if examining attorney fails to object to the evidence in the first Office action following the response and to advise the applicant of proper way to make Internet evidence of record).

<sup>12</sup> 13 TTABUVE.

<sup>13</sup> 33 TTABVUE.

<sup>14</sup> 14 TTABVUE.

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