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

Proceeding	91243647
Party	Plaintiff Blacklands Malt, LLC
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Submission	Appeal or Cross-Appeal of Final Board Decision
Notice of Appeal to	Civil Action in United States District Court
Name of U.S. District Court (if applicable)	Northern District of Texas (Dallas Division)
Case Number (if known)	TXND-3:2020-cv-00971
Certificate of Service	The undersigned hereby certifies that a copy of this filing has been served upon all parties, at their address of record by Email on this date.
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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

M DISTILLERY, INC.,

PLAINTIFF,

v.

BLACKLANDS MALT, LLC,

DEFENDANT.

CIVIL ACTION NO. _____

COMPLAINT FOR *DE NOVO* REVIEW
OF DECISION OF TRADEMARK TRIAL AND APPEAL BOARD

Plaintiff M Distillery, Inc. (“M Distillery” or “Plaintiff”) brings this action as against Defendant Blacklands Malt, LLC (“Blacklands Malt” or “Defendant”) and alleges as follows in support of its complaint:

I. Nature of the Action

1. This is an action under the Lanham Act, 15 U.S.C § 1071(b), seeking *de novo* judicial review of a final decision of the Trademark Trial and Appeal Board (“TTAB”) of the United States Patent and Trademark Office (“USPTO”). It is filed in connection with a trademark opposition proceeding captioned *Blacklands Malt, LLC v. M Distillery, Inc.*, Opposition No. 91243647 (the “Opposition Proceeding”).

2. By a final decision dated November 18, 2019, and a subsequent order on motion for reconsideration dated March 31, 2020, the TTAB sustained an opposition by Defendant to M Distillery’s application to register an intent-to-use trademark under Section 1(b) of 15 U.S.C. § 1051(b) for the mark BLACKLAND DISTILLERY (standard characters, “DISTILLERY” disclaimed) as shown in Application Serial No. 87/731,387 for “distilled spirits” in International

Class 33 (the “Application”). In its final decision (and its order on motion for reconsideration), the TTAB sustained the opposition on the basis of likelihood of confusion, but dismissed the opposition on the basis of geographic descriptiveness.

3. The decision by the TTAB sustaining Defendant’s opposition as to likelihood of confusion was incorrect and not supported either by the law or the evidence in this matter. Accordingly, by this action, M Distillery seeks an order from this court reversing and vacating the referenced TTAB order as to likelihood of confusion and, further, ordering the USPTO to allow M Distillery’s BLACKLAND DISTILLERY mark to proceed to registration on the Principal Register.

II. The Parties

4. Plaintiff M Distillery, Inc. is a Texas corporation with a principal place of business located at 7105 Meadowside Road S., Fort Worth, Texas 76132.

5. Defendant Blacklands Malt, LLC is a Texas limited liability company with a principal place of business located at 190 N. Bagdad Rd., Bldg. B300, Leander, Texas 78641.

III. Jurisdiction and Venue

6. This court has subject matter jurisdiction in this matter pursuant to the Lanham Act, 15 U.S.C. § 1071(b)(1).

7. This court has personal jurisdiction over M Distillery and Defendant as both parties are registered Texas entities that do business in the state of Texas.

8. Venue is proper in this district pursuant to 15 U.S.C. § 1071(b) and 28 U.S.C. § 1391(b)(1) as Defendant is deemed to be a resident of the Northern District of Texas pursuant to 28 U.S.C. § 1391(c)(2) and M Distillery maintains its principal place of business within the Northern District of Texas.

IV. Background

9. M Distillery filed its Application on December 21, 2017, seeking registration for the mark BLACKLAND DISTILLERY on the USPTO's Principal Register.

10. The USPTO approved M Distillery's mark BLACKLAND DISTILLERY for publication and the mark was published in the *Official Gazette* for opposition on May 22, 2018.

11. On June 4, 2018, Defendant requested a 90-day extension of the deadline to oppose the Application, and the TTAB granted the extension until September 19, 2018.

12. Thereafter, Defendant instituted an opposition proceeding with the TTAB on September 17, 2018 (the "Opposition"). The basis of the Opposition as against M Distillery's mark BLACKLAND DISTILLERY was two-fold: (1) priority and likelihood of confusion under 15 U.S.C. § 1052(d); and (2) geographic descriptiveness under 15 U.S.C. § 1052(e)(2).

13. With respect to its allegations under 15 U.S.C. § 1052(d) as to priority and likelihood of confusion, Defendant pleaded that M Distillery's mark BLACKLAND DISTILLERY so resembles Defendant's mark BLACKLANDS MALT used in association with "malt for brewing and distilling" as to be likely to cause confusion, or to cause mistake, or to deceive.¹

14. With respect to its allegations under 15 U.S.C. § 1052(e)(2) as to geographic descriptiveness, Defendant pleaded that the mark BLACKLANDS MALT and the mark

¹ Critically, Defendant does not have registered trademarks for the BLACKLANDS MALT marks. Following M Distillery's Application on December 21, 2017, Defendant subsequently filed its own applications for the mark BLACKLANDS MALT on April 2, 2018—U.S. Trademark App. Ser. No. 87/859,068 for the mark BLACKLANDS MALT ("MALT" disclaimed) and U.S. Trademark App. Ser. No. 87/859,071 for the mark BLACKLANDS MALT & Design ("MALT" disclaimed), both of which allege use-in-commerce at least as early as December 2013 in association with "malt for brewing and distilling" in International Class 31. To date, both of Defendant's later-filed applications remain suspended by the USPTO.

BLACKLAND DISTILLERY consist of the same element of BLACKLAND[S], which Defendant alleged was primarily geographically descriptive, referring to the “Texas Blackland Prairies” geographic region.

15. Following M Distillery’s timely answer to the Opposition, the parties agreed to utilize the TTAB’s Accelerated Case Resolution (“ACR”) procedure on December 28, 2018.

16. Pursuant to the agreed-upon ACR procedure, the parties made numerous stipulations and agreed to a summary judgment format for resolution of the Opposition Proceeding.

17. Following the filing of physical and testamentary evidence as well as briefing by the parties, on November 18, 2019, the TTAB issued a decision sustaining Defendant’s Opposition on the ground that there was a likelihood of confusion between certain of Defendant’s mark BLACKLANDS MALT marks and M Distillery’s mark BLACKLAND DISTILLERY; however, the TTAB dismissed Defendant’s Opposition on the grounds of geographic descriptiveness. Pursuant to its findings, the TTAB denied M Distillery’s registration of the mark BLACKLAND DISTILLERY. A true and correct copy of the TTAB’s decision (the “Final Decision”) is attached hereto as Exhibit 1.

18. Thereafter, on November 27, 2019, M Distillery filed Applicant’s Motion for Reconsideration Under 37 CFR § 2.129(c) (“Reconsideration”) alleging that the Final Decision was reached in error for two (2) reasons: (1) the TTAB failed to consider evidence that the TTAB mistakenly believed was not present in the record; and (2) the TTAB erroneously interpreted the evidence and authority, which misinterpretation resulted in a misapplication of the requisite factors for determining whether there was or was not a likelihood of confusion.

19. By way of summary, throughout the Opposition Proceeding as well as within its Reconsideration, M Distillery argued that its mark BLACKLAND DISTILLERY is used as a

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