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

Proceeding	92051587
Party	Defendant Various, Inc.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JAMES CONKLE, Petitioner, v. VARIOUS, INC., Registrant.	)	Cancellation No. 92051587

MOTION FOR RECONSIDERATION
OR, IN THE ALTERNATIVE, CLARIFICATION

Registrant Various, Inc. ("Registrant"), by its attorneys, hereby moves the Board, pursuant to 37 CFR § 2.127(b) and TBMP § 518 (2d Ed. 2003, Revision 1 2004), for reconsideration or clarification of the Board's July 14, 2010 order (the "Order") partially denying Registrant's motion to dismiss Petitioner James Conkle's ("Petitioner") petition to cancel (the "Petition").

Based on the prevailing authorities and accepting all of Petitioner's allegations as true, the Board's Order partially denying Registrant's motion to dismiss is in error and requires appropriate change because Petitioner has not sufficiently pled standing to cancel Registrant's federal trademark registration for ADULTFRIENDFINDER ("Registrant's Mark"), and Petitioner has not sufficiently pled that Registrant's Mark is scandalous or immoral on its face.

I. THE BOARD ERRED IN FINDING THAT PETITIONER PLED STANDING TO CANCEL THE REGISTRATION

As will be demonstrated, Petitioner's claims must be dismissed because, as a matter of law, Petitioner has not sufficiently pled standing to cancel Registrant's Mark. Petitioner is a mere intermeddler, a "self-appointed guardian of the register," and does not meet the minimal

statutory requirement of 15 USC § 1063. The Board's Order is in error because the public policy implications of the Board's Order essentially defeat the requirement that petitioners have standing to assert claims. Furthermore, Petitioner's allegations, even if true, do not and cannot establish that Petitioner would be damaged by the continued registration of Registrant's Mark, and certainly do not establish that his alleged belief in damage is reasonable or objective. Finally, the Board's reliance on *Ritchie v. Simpson,* 170 F.3d 1092 (Fed. Cir. 1999) ("Ritchie v. Simpson"), is in error. That case was predicated upon a unique set of facts where it was clear that a substantial portion of the American public was familiar with the mark in question, unlike the facts in this case. The Board should reconsider its Order and dismiss the Petition for lack of standing.

A. The Board's Order is in error because it is contrary to public policy.

The Board's Order is in error because it opens the door for any person to state a claim to cancel trademark registrations owned by persons or entities he/she finds offensive, provided only that he/she alleges that other members of the general public share his/her view. This decision creates a dangerous and too easy opportunity for the intermeddling public to burden commercial rights in which it has no interest. For instance, under the Board's Order, an angry Gulf Coast resident could state a claim to cancel BP's trademark registrations by simply alleging in a petition to cancel that "other members of the general public share his view" that the mark BP is "scandalous and immoral." Neither Petitioner nor the Board should have the moral authority, social responsibility, or judgmental power to intrude into commercial trademark rights based on moral disapproval of the trademark owner or the goods and services provided by the trademark owner. If Petitioner's allegations in his Petition are sufficient to plead standing, then mere disapproval by a member of the general public of any registrant could provide standing to cancel

any commercial trademark. Indeed, under the Board's Order, a member of the general public could sufficiently plead that the marks PLANNED PARENTHOOD, THE ADVOCATE, or VOICE OF ISLAM are "scandalous" by simply alleging that "other members of the general public share his/her view." The board's cancellation proceedings were not designed for this purpose, and the Lanham Act was not designed to convert federal trademark proceedings into a forum for attack on the morality of a registrant or the goods or services provided by a registrant.

Accordingly, the Board's Order is in error because it opens the trademark tribunals to the litigation of moral preferences by persons with no real interest in the trademark, thereby defeating the purpose established by generations of courts requiring that a litigant have legitimate standing. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 804 (1985) (tribunals should "avoid deciding questions of broad social import where no individual rights would be vindicated"); *see*, e.g., *Allen v. Wright*, 468 U.S. 737, 751 (1984) ("A plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief"); *Hein v. Freedom from Religion Found., Inc.*, 551 U.S. 587, 598 (2007). The Board's Order is contrary to precedent. As such, the Board should reconsider its Order denying Registrant's motion to dismiss for lack of standing, and dismiss the Petition because Petitioner lacks standing to cancel Registrant's Mark.

B. Petitioner does not and cannot allege a personal interest in canceling Registrant's trademark registration.

Petitioner does not and cannot allege a personal interest in or actual damage caused by the continued registration of Registrant's Mark. Before analyzing whether Petitioner's belief in damage is "reasonable" or "objective," the Board's Order erred in finding that Petitioner sufficiently alleged that he has a direct and personal interest in the outcome of this proceeding. *McDermott v. San Francisco Women's Motorcycle Contingent*, Opposition No. 91169211, 2006

WL 2682345, at *4 (TTAB Sept. 13, 2006) ("An opposer must also satisfy *two* judicially-created requirements in order to have standing: the opposer (1) must have a 'real interest' in the proceedings, and (2) must have a 'reasonable' basis for belief of damage") (emphasis added) (citing *Ritchie* at 1099). Petitioner fails to assert or explain in his Petition any actual damage that would amount to a "real interest" in the cancellation of Registrant's Mark. In his Petition, Petitioner alleges how Registrant's purported *business* damages him, but Petitioner fails to sufficiently allege how Registrant's *Mark* damages him. Merely disliking a mark does not give a party direct and personal interest in the cancellation of its federal registration. *See McDermott*, 2006 WL 2682345, at *6. As such, the Board should reconsider its Order finding that Petitioner sufficiently pled that he has a direct and personal interest in the outcome of this proceeding, and dismiss the Petition because Petitioner lacks standing to cancel Registrant's Mark.

C. Petitioner fails to plead that his alleged belief in damage is "reasonable" or "objective."

The Board's Order erroneously found that Petitioner has a "reasonable, objective basis" for his alleged belief in damage. (Order at 6.) The Board found that, by merely alleging that Petitioner "travels frequently," "communicates each month with thousands of people he knows and encounters ... on various religious, and social moral issues, including the scandalous and immoral meaning of registrant's mark[]," and that he has allegedly surveyed substantial numbers of people throughout "the heartland of America" and in his own community, Petitioner has sufficiently stated a claim that he has a reasonable, objective basis for his belief in damage. (Order at 6.) It is telling, however, that Petitioner never affirmatively states in these allegations that any of the thousands of people that he communicates with each month believe that they would also be damaged by the continued registration of Registrant's purportedly scandalous or immoral mark. (*See* Petition, ¶ 2.) Petitioner's allegations only attest to the purported fact that

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