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

Proceeding	92057500
Party	Plaintiff Orbis Distribution, Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application Serial Number: 78/368710
Registration Number: 3197276
For the Mark: Bee Naturals

Orbis Distribution, Inc,
Plaintiff,

v.

Bee Naturals, Inc.,
Defendant.

Cancellation Number:
92057500

PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT AND BRIEF IN SUPPORT

Because the solely remaining issues before the Board are a legal matters, this Cancellation proceeding is appropriate for summary judgment.¹ Therefore, the Plaintiff requests that the Board decide the remaining legal issues.

INTRODUCTION

This matter concerns the most basis aspects of the federal laws governing trademark registration and maintenance: (1) use in commerce, and (2) ownership of a mark.

First, in order to maintain a federal trademark registration in the United States, a mark must be used in continuous lawful commerce during the five to six year period prior to the submission of the declaration of use document. The Defendant was administratively dissolved for nearly nine consecutive years of the “Bee Naturals” mark’s registration and was unable to use its mark in commerce as a matter of law. Thus, the mark must be cancelled.

The Defendant has made an argument in its Answer and its own Motion for Summary Judgment that Missouri law allows for rescission of the corporation; however, that argument is

¹ The parties have exchanged Initial Disclosures and had a Discovery Conference.

contrary to the United States Code, decisions of the Federal Circuit, the Missouri statutes, and decisions of the Missouri Court of Appeals and Federal Courts.

Second, at the time of filing the Combined Declaration of Use and Incontestability, a registrant must be the owner of the mark. In this case, the Defendant could not have used the mark in commerce; thus, it was not an owner of the mark as a matter of law, and the mark must be cancelled.

The Defendant's case fails each of these basic areas of law. Each one of these carries the same penalty—cancellation of the mark; therefore, the Plaintiff is only required to prove one in order for the mark to be cancelled.

FACTS

The following facts are undisputed.

I. Facts Regarding Use in Commerce and Administrative Dissolution

The Defendant has admitted it was administratively dissolved. (Defendant's Answer, ¶¶24-25.) The Defendant was administratively dissolved in 2006. (Exhibit E.) The mark was registered in 2007. (TSDR, Serial Number 78368710, Registration Certificate.) The Defendant did not reinstate its company until April 29, 2014. (TTAB Record.)

The Defendant has admitted that a corporation when dissolved cannot carry on any business. (Defendant's Answer, ¶26.) Specifically, the Defendant answered two allegations by admitting that Missouri does not authorize an administratively dissolved corporation to carry on business except to wind up and liquidate its business and referenced two section of the Missouri statutes in support. (Id. at ¶¶24, 26.) Sections 351.476 and 351.486 of the Missouri Statutes are incorporated into the Defendant's Answer. (Id.) The Defendant also admitted the following allegations of the Complaint:

24. As shown on the Missouri Secretary of State Business Name History webpage, the relevant part of which is attached hereto as Exhibit B, the business BeeNaturals, Inc. had been previously administratively dissolved and did not exist as a legal entity as of July 10, 2013. [ADMITTED as to Administrative Dissolution.]

25. As shown on the Administrative Dissolution or Revocation for a For-Profit Corporation dated December 29, 2006, attached hereto as Exhibit D, BeeNaturals, Inc. was administratively dissolved or revoked under relevant Missouri law “as of December 29, 2006.” [ADMITTED as to Administrative Dissolution or Revocation.]

26. As shown on the Administrative Dissolution or Revocation for a For-Profit Corporation dated December 29, 2006, attached hereto as Exhibit D, BeeNaturals, Inc., due to its administrative dissolution, cannot (as of 2006) carry on any business except that necessary to wind up and liquidate its business and affairs. [ADMITTED BY DEFENDANT, except for the year 2006.]

27. Pursuant to the Trademark Act, an owner must be a legal entity or person in order to maintain a trademark registration. [ADMITTED BY DEFENDANT.]

28. Pursuant to the Trademark Act, an owner must be a legal entity or person in order to file a Combined Declaration under Section 8 and Section 15. [ADMITTED BY DEFENDANT.]

(Petition to Cancel, ¶¶24-28.) Specifically, this is how the Defendant answered allegations 24-28 of the Complaint:

24. Defendant **admits that the corporation has been administratively dissolved** subject to rescission; however, under Missouri law, this does not mean the corporation ceases to exist. RSMO 351.486.

25. Denied. **The corporation was administratively dissolved or revoked**, subject to rescission.

26. **It is admitted that Missouri does not authorize an administratively dissolved corporation to carry on business except to wind up and liquidate its business as in RSMO 351.476.** The parenthetical “(as of 2006)” in paragraph 26 is denied.

27. **Admitted.**

28. **Admitted.**

Answer, ¶¶24-29. (Emphases added.)

II. Facts Regarding Ownership

As the Board found in its Decision of June 14, 2014, the responded has put forth the contention that it alone owned the mark, and “the record now supports respondent’s contention that BeeNaturals Inc. is the sole owner of the registration” (Decision, June 14, 2014, 5.)

LAW

Introduction: Summary Judgment and Abandonment

A. The Law of Summary Judgment

Motion for summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Trademark Trial and Appeal Board Manual of Procedure, § 528.01 (2014)(citations omitted).

The purpose . . . [is] to avoid an unnecessary trial where there is no genuine issue of material fact and more evidence than is already available in connection with the summary judgment motion could not reasonably be expected to change the result in the case. . . . [T]he Board does not hesitate to dispose of cases on summary judgment when appropriate.

Id. (citations omitted).

A party moving for summary judgment has the burden of demonstrating the absence of any genuine issue of material fact, and that it is entitled to judgment as a matter of law . . . [which] may be met by showing “that there is an absence of evidence to support the nonmoving party's case.” If the moving party meets its burden, that is, if the moving party has supported its motion with affidavits or other evidence which if unopposed would establish its right to judgment, the nonmoving party may not rest on mere denials or conclusory assertions, but rather must proffer countering evidence, by affidavit or as otherwise provided in Fed. R. Civ. P. 56, showing that there is a genuine factual dispute for trial.

Id. (citations omitted).

A factual dispute is genuine only if, on the evidence of record, a reasonable fact finder could resolve the matter in favor of the nonmoving party. . . . A fact is material if it “may affect the decision, whereby the finding of that fact is relevant and necessary to the proceedings.” However, a dispute over a fact which would not alter the Board’s decision on the legal issue will not prevent entry of summary judgment.

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