

ESTTA Tracking number: **ESTTA1060941**

Filing date: **06/10/2020**

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

Proceeding	92072806
Party	Plaintiff Sparks Law, LLC
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Submission	Motion for Default Judgment
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Date	06/10/2020
Attachments	2020.06.10_Renewed Motion_FINAL.pdf(209536 bytes ) 2020.01.31_Luft Declaration_final.pdf(1120722 bytes ) 2020.01.31_Thomas Declaration_final.pdf(2013867 bytes )

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

In the matter of United States Reg. Nos. 5668170 & 5672233

For the mark SPARKS LAW

Sparks Law, LLC,

Petitioner,

v.

Sparks Law, LLC,

Respondent.

Cancellation No. 92072806

**PETITIONER’S MOTION FOR DEFAULT JUDGMENT OR, IN THE ALTERNATIVE,  
FOR JUDGMENT ON THE PLEADINGS**

Petitioner, Sparks Law, LLC (“Petitioner” or “New England Sparks Law”), hereby moves for default judgment against the Respondent, Sparks Law, LLC (“Respondent” or “Georgia Sparks Law”) or, in the alternative, pursuant to Rule 12(c) of the Federal Rules of Civil Procedure and Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) § 504, for a judgment on the pleadings with respect to the claims set forth in Petitioner’s Petition(s) For Cancellation.

On May 7, 2020, the Board indicated that Respondent was in default with respect to Petitioner’s petition regarding Registration No. 5672233 because “Respondent did not include an answer to the petition that is directed to Registration No. 5672233.” TTAB Order, May 7, 2020 (“TTAB Order”), p. 2. The Board therefore determined that Petitioner’s Motion for Judgment on the Pleadings was premature with respect to Registration No. 5672233. *Id.* at 2. The Board allowed

Respondent thirty days to file an amended answer, which includes its answer to the petition to cancel Registration No. 5672233. *Id.* at p. 3. Nonetheless, Respondent failed to file an amended answer, instead filing what appears to be a sur-reply to Petitioner’s original Motion for Judgment on the Pleadings.<sup>1</sup> (Doc. 11.)

Accordingly, Petitioner hereby moves for default judgment against the Respondent with respect to Registration No. 5672233. It is not clear to the Petitioner whether the TTAB Order required Respondent to file an amended answer with respect to Registration No. 5668170. If so, then Petitioner also moves for default judgment against the Respondent with respect to Registration No. 5668170. If not, then Petitioner renews its motion for judgment on the pleadings with respect to Registration No. 5668170 (and, if for some reason the Board determines that no default has taken place, with respect to Registration No. 5672233) on the basis that Respondent is unable to show that it has priority of rights in the SPARKS LAW mark, and also has not used the mark in interstate commerce, as it only provides services within the state of Georgia.

#### **STATEMENT OF UNDISPUTED FACTS**

Respondent is the owner of two federal registrations, Registration No. 5672233 (“SPARKS LAW” standard characters) and Registration No. 5668170 (“SPARKS LAW” design plus words, letters, and/or numbers) (collectively, the “Respondent’s Registrations”). *See* Declaration of Ryan S. Luft (“Luft Decl.”), dated January 31, 2020, ¶ 2. Both of Respondent’s Registrations claim a date of First Use in Commerce of March 29, 2016. *See id.*

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<sup>1</sup> Petitioner believes that its Motion for Judgment on the Pleadings (Doc. 6) is no longer pending per the TTAB Order and so there can be no further briefing. Nonetheless, even if it *were* pending, it is clear that the brief should be disregarded: “Surreply briefs will be given no consideration by the Board. Accordingly, it is not necessary to file (and the Board discourages the filing of) a motion to strike a surreply brief or any other briefs beyond a reply brief filed on a motion, since such papers will not be considered whether or not a motion to strike is filed.”

The principal of New England Sparks Law, Thomas E. Sparks, has been a licensed attorney in Rhode Island since May 21, 1993, and in Massachusetts since December 17, 1993. *See* Declaration of Thomas E. Sparks (“Sparks Decl.”), dated January 31, 2020, ¶ 1. His firm, Sparks Law, LLC, the Petitioner in this matter, has been registered with the Rhode Island Secretary of State since June 19, 2012. Sparks Decl., ¶ 2. New England Sparks Law provides legal services in at least two states – Rhode Island and Massachusetts. Sparks Decl., ¶ 3. Since at least September 1, 2012, New England Sparks Law has advertised its legal services and continuously used the “SPARKS LAW” mark in interstate commerce. Sparks Decl., ¶ 4. The URL, 1800sparkslaw.com, was registered in 2009, and has been used in firm advertising since at least 2012. Sparks Decl., ¶ 5. It has not abandoned its use of the mark. *Id.*

On December 6, 2017, New England Sparks Law filed an application for SPARKS LAW (standard character mark). Luft Decl., ¶ 3. New England Sparks Law claims a date of first use of September 1, 2012, *see id.*, as that marked its first use of the “SPARKS LAW” mark in Interstate commerce. *See id.*; *see also* Sparks Decl., ¶ 4.

Respondent, Georgia Sparks Law, claims a first use of its marks that are subsequent to New England Sparks Law’s first use in commerce. Georgia Sparks Law was formed in Georgia on January 11, 2016. Luft Decl., ¶ 4. As evidenced on its website, none of the attorneys in the Georgia Sparks Law firm are licensed in jurisdictions outside of Georgia, and the legal services provided by that firm are confined to Georgia. Luft Decl., ¶ 6.

Nonetheless, despite the above undisputed facts, the Examining Attorney responsible for Petitioner’s application cited Respondent’s marks as a bar to registration. Petitioner filed the present Petition for Cancellation against Respondent on November 11, 2019 with respect to

Registration Nos. 5672233 and 5668170.<sup>2</sup> Respondent filed an Answer with respect to Registration No. 5668170 only on December 31, 2019.

On May 7, 2020, the Board indicated that Respondent was in default with respect to Petitioner's petition regarding Registration No. 5672233 because "Respondent did not include an answer to the petition that is directed to Registration No. 5672233. TTAB Order, May 7, 2020, p. 2. The Board therefore determined that Petitioner's Motion for Judgment on the Pleadings was premature with respect to Registration No. 5672233. *Id.* at 2. The Board allowed Respondent thirty days to file an amended answer which includes its answer to the petition to cancel Registration No. 5672233. *Id.* at p. 3. Respondent failed to file an amended answer.

## ARGUMENT

### **I. Standing**

In order for Petitioner to establish standing, Petitioner must show that it possesses a real interest in the proceeding beyond that of a mere intermeddler, and that it has a reasonable basis for its belief of damage resulting from the registration, or continued registration, or the subject mark. *Marco Industries, Inc. v. Mark White*, Cancellation No. 92065963 (T.T.A.B. 2019) [not precedential] (citing *Ritchie v. Simpson*, 170 F.3d. 1092, 50 U.S.P.Q.2d 1023, 1025-26 (Fed. Cir. 1999)).

Trademark Rule 2.122(d) specifies that a party may make a pleaded registration of record in an *inter partes* proceeding by submitting a copy of the registration, or a printout of information

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<sup>2</sup> Although unusual in form, Petitioner cited both of Respondent's Registrations in Petitioner's Petition for Cancellation. Petitioner separated its Petition into two parts, each of which addressed one of Respondent's Registrations.

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