

Trademark law professor opposes RAPUNZEL, but consumers lack statutory entitlement

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12 June 2023



UNITED STATES OF AMERICA

Legal updates: case law analysis and intelligence

- Being a consumer of a product does not grant statutory entitlement to oppose registration of a trademark for that product
- The 'zone of interests' required to be entitled to oppose a mark extends only to those with commercial interest
- Consumers, including businesses when they act as consumers, cannot invoke opposition or cancellation under the Trademark Act

Background

Applicant United Trademark Holdings Inc applied to register RAPUNZEL for dolls and toy figures. Suffolk University Professor of Law Rebecca Curtin sought to oppose, anticipating harm from the registration from the perspective of being a consumer of Rapunzel products for her daughter. Professor Curtin's concerns included that registration would stifle competition and cause increased cost of products, as well as dampen the marketplace of ideas as it relates to different and diverse interpretations of the Rapunzel character and story.

Decision

In [Curtin v United Trademark Holdings Inc](#) (Opposition No 91241083), the Trademark Trial and Appeal Board dismissed Professor Curtin's action because a mere consumer is not entitled to oppose under Section 13 of the Trademark Act, 15 USC § 1063. The TTAB relied largely on [Lexmark International Inc v Static Control Components Inc](#) (572 US 118 (2014)). In order to pursue *inter partes* proceedings at the board, a party must first be entitled to the statutory cause of action invoked. To file for opposition or cancellation under the Trademark Act, the opponent or petitioner must allege injury to interests that fall within the 'zone of interests' that the act was intended to protect. Section 45 of the act, 15 USC § 1127, states its statutory intent:

regulating commerce to protect persons engaged in commerce from unfair competition. *Lexmark* confirmed that the zone of interests required to be entitled to oppose or cancel a mark extends only to those with commercial interest - specifically, those who are at risk of damage to sales or damage to reputation.

The board delved into case law reiterating that consumers, including businesses when they act as consumers, cannot invoke opposition or cancellation under the Trademark Act; rather, the act was designed to protect entities engaged in commerce - those who have a reputation at stake and/or sales at stake if an unfairly competitive mark proceeds to registration.

Lastly, the board discussed how clearer causation is required for an opposition. Again citing *Lexmark*, any reputational or economic injury alleged in an opposition must flow directly from the act of the offending mark being granted registration. This element is another reason why consumers like Professor Curtin generally are not entitled to oppose or cancel a mark, because anticipated dampening of competition, increase in product cost or stifling of product diversity are all speculative and remote possibilities difficult to support with present facts.

Comment

The board considered an argument raised by Professor Curtin pertaining to standing under the Clayton Antitrust Act. While the verbiage of standing was not used in reference to opposition or cancellation under the Trademark Act, it seems to be a similar legal concept. Ultimately, before the board (as opposed to before a court), the language used was that of 'statutory entitlement to a cause of action', and not standing.

Additionally, it is interesting to note that, in the board's review of applicable case law, the similar question of whether a foreign entity could have statutory entitlement was mentioned. Since the Trademark Act zone of interest applies only to US commerce, a foreign entity would not have statutory entitlement to opposition or cancellation unless it had commercial interest in US sales or reputation within the United States. Statutory entitlement, as it pertains to foreign entities as well as consumers, is unified by the statutory intent of the Trademark Act, which is a product of congressional powers in federalism and namely the commerce clause of the US Constitution.

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