

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed: December 29, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

—  
*JIPC Management, Inc.*

*v.*

*Incredible Pizza Co., Inc.*

—  
Opposition No. 91170452  
against Serial No. 78575077

—  
Cancellation No. 92043316  
against Registration No. 2500872

—  
Anne W. Glazer of Stoel Rives LLP for JIPC Management, Inc.  
Mary M. Clapp of Clapp Business Law LLC for Incredible Pizza Co., Inc.

—  
Before Kuhlke, Shaw, and Larkin, Administrative Trademark Judges.  
Opinion by Shaw, Administrative Trademark Judge:

Incredible Pizza Co., Inc. (“IPC” or Respondent) is the owner of Registration No. 2500872<sup>1</sup> for the mark:



for “Restaurant services” in International Class 42. IPC has disclaimed “Pizza Co.”<sup>2</sup>

IPC also owns Application Serial No. 78575077<sup>3</sup> for the mark:



for services identified as “Restaurant franchising; franchising, namely consultation and assistance in business management, organization and promotion; franchising, namely, offering technical assistance in the establishment and/or operation of restaurants” in International Class 35. IPC has disclaimed “America’s” and “Pizza Company.” The mark is described as follows: “The mark consists of a sector with the

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<sup>1</sup> Issued October 23, 1999; renewed.

<sup>2</sup> After registration, IPC amended its drawing under Section 7 of the Trademark Act, 15 U.S.C. § 1057(e), to, *inter alia*, substitute the word “Company” for “Co.” The amendment was accepted and a new certificate of registration was issued with the mark shown above. The disclaimer, however, was not amended to conform to the new drawing.

<sup>3</sup> Filed February 25, 2005, based on Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), with a claimed date of first use anywhere and in commerce of April 20, 2004.

words ‘America’s’ ‘Incredible Pizza Company’; rectangular background with the words ‘Great Food, Fun, Family, & Friends’; checkerboard design; and ribbon design.”

In its petition for cancellation and notice of opposition, JIPC Management, Inc. (Petitioner) alleges priority of use and likelihood of confusion with its marks, as well as fraud on the USPTO in connection with Respondent’s applications to register its marks. Petitioner claims ownership of the following relevant registrations:

- Registration No. 3025377 for the mark JOHN’S INCREDIBLE PIZZA CO. in standard characters for services identified as “Restaurant services” in International Class 43, issued December 13, 2005 and claiming a date of first use in commerce and anywhere as early as September 1997, “PIZZA CO.” disclaimed; and
- Registration No. 3058427 for the mark JOHN’S INCREDIBLE PIZZA CO. in standard characters for services identified as “Entertainment services, namely, providing play areas, miniature golf, laser tag, bumper cars, arcade games, prize redemption games, and arcade rides; providing coin operated video games in the nature of an amusement arcade; providing continuous music video pre-recorded video broadcasts via television” in International Class 41, issued February 14, 2006 and claiming a date of first use in commerce and anywhere as early as September 1997, “CO.” disclaimed.

I. Procedural History

Because of the lengthy history of these proceedings we first provide a summary of them. The petition to cancel Registration No. 2500872 was filed on May 21, 2004.<sup>4</sup> The Notice of Opposition against Application Serial No. 78575077 was filed on April 19, 2006.<sup>5</sup> The proceedings were consolidated by the Board on December 4, 2006 upon Petitioner's motion.<sup>6</sup> After the close of the testimony periods, briefing was completed, with the final brief being filed on July 10, 2008.<sup>7</sup> During the briefing, however, Petitioner filed a civil action alleging trademark infringement and unfair competition in the U.S. District Court for the Central District of California. Shortly after the briefing concluded, Respondent filed a motion to suspend the Board proceedings pending the outcome of the district court case.<sup>8</sup> The Board granted the motion and suspended the proceedings on November 24, 2008, noting that "inasmuch as the civil action clearly involves the same parties and the same marks, it appears that the civil action will likely 'have a bearing' on the case before the Board."<sup>9</sup> Proceedings remained suspended until the completion of the district court case, whereupon proceedings resumed and supplemental briefing was ordered to address any issues determined in the civil action.<sup>10</sup> Supplemental briefing was completed on October, 6,

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<sup>4</sup> Cancellation No. 92043316, 1 TTABVUE.

<sup>5</sup> Opposition No. 91170452, 1 TTABVUE.

<sup>6</sup> 10 TTABVUE. All further references to the record are to Opposition No. 91170452.

<sup>7</sup> 57 TTABVUE.

<sup>8</sup> 60 TTABVUE.

<sup>9</sup> 63 TTABVUE 3.

<sup>10</sup> 77 TTABVUE.

2016,<sup>11</sup> and the case has been submitted on brief. The district court case is discussed *infra*.

## II. Evidentiary Objections

Each party has filed a number of objections against certain testimony and evidence introduced by its adversary. We have considered each objection. Ultimately, the Board is capable of weighing the relevance and strength or weakness of the objected-to testimony and evidence in this case, including any inherent limitations, which preclude the need to strike the challenged testimony and evidence if the objection is well-taken. Given the circumstances, we choose not to make specific rulings on each and every objection. We have accorded the testimony and evidence whatever probative value it merits, keeping the parties' objections in mind, and comment as needed on its probative value elsewhere in the opinion. *See Alcatraz Media Inc. v. Chesapeake Marine Tours Inc.*, 107 USPQ2d 1750, 1755 (TTAB 2013), *aff'd mem.*, 565 Fed. Appx. 900 (Fed. Cir. 2014); *Kohler Co. v. Baldwin Hardware Corp.*, 82 USPQ2d 1100, 1104 (TTAB 2007). *See also Krause v. Krause Publ'ns Inc.*, 76 USPQ2d 1904, 1907 (TTAB 2005) ("Where we have relied on testimony to which respondent objected, it should be apparent to the parties that we have deemed the material both admissible and probative to the extent indicated in the opinion.").

## III. The Record

The record includes the pleadings and, by operation of Trademark Rule 2.122(b), 37 C.F.R. § 2.122(b), the file of the involved registration and application. In addition,

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<sup>11</sup> 87 TTABVUE.

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