

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed:
July 17, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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DC Comics
v.
Gotham City Networking, Inc.

—
Opposition No. 91194716

James D. Weinberger and Leo Kittay of Fross Zelnick Lehrman & Zissu, P.C. for DC Comics.

Daniel West and David O. Klein of Klein Moynihan Turco LLP for Gotham City Networking, Inc.

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Before Taylor, Bergsman and Wolfson, Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Gotham City Networking, Inc. (“Applicant”) filed two use-based applications for the marks GOTHAM BATMEN, in standard character form, and GOTHAM BATMEN and design, shown below,¹

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¹ Serial Nos. 77669398 and 77668420, respectively, filed on consecutive days in February 2009. Applicant claimed February 1, 2006 as the date of first use of its mark anywhere and the date of first use of its mark in commerce for both classes of services in each of the applications.



both for the services set forth below:

General business networking referral services, namely, promoting the goods and services of others by passing business leads and referrals among group members, in Class 35; and

Entertainment in the nature of amateur softball games, in Class 41.

Applicant disclaimed the exclusive right to use the word “Gotham.”²

DC Comics (“Opposer”) opposed the registration of Applicant’s marks on the grounds of likelihood of confusion under Section 2(d) of the Trademark Act of 1946, 15 U.S.C. § 1052(d), and dilution by blurring and tarnishment under Section 43(c) of the Trademark Act, 15 U.S.C. § 1125(c).³ In its Second Amended Notice of Opposition, Opposer claimed ownership of the following registrations:

1. Registration No. 3313612 for the BATMAN logo shown below, for, *inter alia*, toys and sporting goods, in Class 28;⁴

² “Gotham” is defined as “a journalistic nickname for New York City.” Dictionary.com based on the **RANDOM HOUSE DICTIONARY** (2013). Applicant’s notice of reliance Exhibit 9 (51 TTABVUE 36). Citations to the record will be to TTABVUE, the docket history system for the Trademark Trial and Appeal Board.

³ Opposer also pleaded that Applicant abandoned the use of its marks for the activities in both classes 35 and 41. However, because Opposer did not pursue those claims in its brief, we consider them withdrawn. *Research in Motion Limited v. Defining Presence Marketing Group Inc.*, 102 USPQ2d 1187, 1189-90 (TTAB 2012); *Swiss Watch International Inc. v. Federation of the Swiss Watch Industry*, 101 USPQ2d 1731, 1734 n.4 (TTAB 2012).

⁴ Registered October 16, 2007; Sections 8 and 15 affidavits accepted and acknowledged.



2. Registration No. 1221720 for the mark BATMAN, in typed drawing form, for “comic magazines,” in Class 16;⁵

3. Registration No. 1652640 for the mark BATMAN, in typed drawing form, for “entertainment services, namely, television and animated cartoon programs,” in Class 41;⁶

4. Registration No. 0856045 for the mark BATMAN, in typed drawing form, for clothing, including inter alia, t-shirts, hats, and warmup jackets, in Class 25;⁷

5. Registration No. 0858860 for the mark BATMAN, in typed drawing form, for toys and games, in Class 22;⁸

6. Registration No. 2457655 for the mark BATMAN, in typed drawing form, for “entertainment in the nature of amusement park rides,” in Class 41;⁹

7. Registration No. 0828412 for the mark BATMAN, in typed drawing form, for “lunch kits, vacuum bottles, combined plastic cups and straws, various types of bags for cosmetics, garments, toiletries, and the like,” in Class 2;¹⁰

⁵ Registered December 12, 1982; second renewal.

⁶ Registered July 30, 1991; second renewal.

⁷ Registered September 3, 1968; second renewal.

⁸ Registered October 22, 1968; second renewal.

⁹ Registered June 5, 2001; renewed.

8. Registration No. 1861233 for the mark BATMAN THE RIDE, in typed drawing form, for “entertainment in the nature of an amusement ride,” in Class 41;¹¹

9. Registration No. 1581659 for the BATMAN logo shown below, for “tank tops, shorts, t-shirts, hats, jackets, sweat shirts, pants, pajamas, sneakers, sunvisors,” in Class 25;¹²



10. Registration No. 1581725 for the BATMAN logo shown below, for “flying discs, video game programs, toy doll figures, toy airplanes,” in Class 28;¹³



11. Registration No. 2119266 for the BATMAN logo shown below, for a variety of books and paper products, in Class 16;¹⁴

¹⁰ Registered May 9, 1967; second renewal.

¹¹ Registered November 1, 1994; renewed.

¹² Registered February 6, 1990; second renewal.

¹³ Registered February 6, 1990; second renewal.

¹⁴ Registered December 9, 1997; renewed.



12. Registration No. 3110604 for the BATMAN logo shown below, for a variety of books and paper products, in Class 16;¹⁵



13. Registration No. 3326043 for the BATMAN logo shown below, for a wide variety of clothing, including shirts, t-shirts and hats, in Class 25;¹⁶ and



14. Registration No. 3353156 for the mark GOTHAM CITY, in typed drawing form, for “toys and sporting goods, namely, games and playthings, namely, action figures and accessories therefor; toy vehicles; dolls; equipment sold as a unit

¹⁵ Registered June 27, 2006; Sections 8 and 15 affidavits accepted and acknowledged.

¹⁶ Registered October 30, 2007; Sections 8 and 15 affidavits accepted and acknowledged.

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