THIS DECISION IS NOT A PRECEDENT OF THE TTAB

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

GCP

Mailed: May 14, 2012

Opposition No. 91194716

DC Comics

v.

Gotham City Networking, Inc.

Before Seeherman, Ritchie, and Wolfson,
Administrative Trademark Judges.

By the Board:

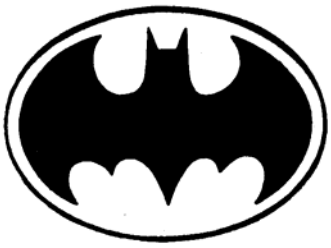
Gotham City Networking, Inc. ("applicant") filed two applications for registration. The first application is for the mark GOTHAM BATMEN in standard characters.[1] The second application is for the mark as displayed below:[2]

[1] Application Serial No. 77669383, filed on February 12, 2009, based upon an allegation of use in commerce under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), claiming February 1, 2006 as both the date of first use and the date of first use in commerce for the services identified in both International Classes 35 and 41. Applicant has disclaimed the term "GOTHAM."

[2] Application Serial No. 77668420, filed on February 11, 2009, based upon an allegation of use in commerce under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), claiming February 1, 2006 as both the date of first use and the date of first use in commerce for the services identified in both International Classes 35 and 41. Applicant has disclaimed the term "GOTHAM."

Both applications recite the following identification of services: "general business networking referral services, namely, promoting the goods and services of others by passing business leads and referrals among group members" in International Class 35 and "entertainment in the nature of amateur softball games" in International Class 41.

DC Comics ("opposer") filed a notice of opposition to registration of applicant's marks on the following grounds: (1) priority and likelihood of confusion, (2) dilution, (3) lack of bona fide use of the marks in commerce as of the filing dates of applicant's involved use-based applications, (4) lack of a current bona fide use of the marks in commerce, and (5) fraud based on lack of a bona fide use of the marks in commerce as of the filing date of applicant's involved applications. In support of its asserted claims, opposer has claimed common law use and ownership of numerous registrations for the mark BATMAN, as well as a related family of bat logo design marks, as illustrated below, used in association with its comic books series and related goods and services, such as television programs, motion pictures, and licensed merchandise including sporting equipment, sports clothing and footwear, protective gear for use in sports activities, toys, food, records, audio/visual tapes, cassettes, CDs and DVDs.



Additionally, opposer alleges common law use and ownership of the registered marks GOTHAM GIRLS, GOTHAM CENTRAL and GOTHAM KNIGHTS used in connection with comics and related animated television series with direct spin-off storylines from its alleged famous BATMAN comics. Opposer also alleges ownership of the registered mark GOTHAM CITY for a variety of goods and services, including toys and sporting goods such as soccer balls, playground balls, baseballs, basketballs, and baseball gloves.

This case now comes before the Board for consideration of (1) applicant's motion for summary judgment on opposer's asserted claims of likelihood of confusion, dilution, lack of bona fide use of the marks, and fraud, and (2) opposer's cross-motion for summary judgment on its asserted claims of

likelihood of confusion, dilution and lack of bona use of the marks. The motions are fully briefed.

A party is entitled to summary judgment when it has demonstrated that there are no genuine disputes as to any material facts, and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The evidence must be viewed in a light favorable to the nonmoving party, and all justifiable inferences are to be drawn in the nonmovant's favor. *Opryland USA Inc. v. The Great American Music Show, Inc.*, 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992).

When the moving party has supported its motion with sufficient evidence which, if unopposed, indicates there is no genuine dispute of material fact, the burden then shifts to the non-moving party to demonstrate the existence of a genuine dispute of material fact to be resolved at trial. *Enbridge, Inc. v. Excelerate Energy LP*, 92 USPQ2d 1537, 1540 (TTAB 2009). Further, merely because both parties have moved for summary judgment does not necessarily mean that there are no genuine disputes of material fact, and does not dictate that judgment should be entered. *See University Book Store v. University of Wisconsin Board of Regents*, 33 USPQ2d 1385, 1389 (TTAB 1994).

Likelihood of Confusion Claim

The parties have cross-moved for summary judgment on the claim of likelihood of confusion. Essentially, the parties

have taken contradictory positions regarding, among other things, the relatedness of the parties' respective goods and services, as well as the trade channels of such goods and services. Applicant additionally argues that, since its involved marks constitute an effective parody of opposer's pleaded marks, there can be no likelihood of confusion.

We initially note that parody is not, *per se*, a "defense" to a claim of likelihood of confusion; rather, "it is merely a way of phrasing the traditional response that customers are not likely to be confused as to source, sponsorship or approval." *Schieffein & Co. v. Jack Co. of Boca*, 725 F. Supp. 1314, 1323 (S.D.N.Y. 1989) (quoting J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition*, § 31:156 (4th ed. database updated 2012)). Thus, parody is simply another factor which is relevant to the analysis of likelihood of confusion because parody is merely another way of arguing that confusion is not likely. *Nike, Inc. v. Just Did It Enterprises*, 6 F.3d 1125, 28 USPQ2d 1942 (7th Cir. 1993); *Utah Lighthouse Ministry v. Found. For Apologetic Info. and Research*, 527 F.3d 1045, 86 USPQ2d 1865 (10th Cir. 1988). In other words, even if the defendant's mark has a parody aspect, that is not necessarily sufficient to prevent likelihood of confusion. *See Elvis Presley Enterprises Inc. v. Capece*, 141 F.3d 188, 46 USPQ2d 1737, 1744 (5th Cir. 1998); *Dr. Seuss*

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