

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: July 29, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board

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Yogi Bhajan Administrative Trust

v.

Inderjit Kaur Puri

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Opposition No. 91217913

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Aaron J. Moss and Elizabeth Sbardellati of Greenberg, Glusker, Fields, Claman &
Machtinger LLP,
for Yogi Bhajan Administrative Trust.

Surjit P. Soni of The Soni Law Firm,¹
for Inderjit Kaur Puri.

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Before Kuczma, Pologeorgis, and Dunn,
Administrative Trademark Judges.

Opinion by Pologeorgis, Administrative Trademark Judge:

Inderjit Kaur Puri (“Applicant”) seeks to register the standard character mark
YOGI on the Principal Register for a laundry list of personal care and cosmetic

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¹ Applicant’s change of correspondence address filed on October 31, 2019 is noted. See 44
TTABVUE. Board records have been updated accordingly.

products for the body, face and hair in International Class 3 and “Douching preparations for medical purposes” in International Class 5.²

Yogi Bhajan Administrative Trust (“Opposer”) opposes registration of Applicant’s mark on the following grounds: (1) likelihood of confusion under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d); (2) Applicant does not have a bona fide intent to use the mark in commerce; and (3) Applicant is not the exclusive owner of the applied-for mark.³ Because Opposer did not pursue its likelihood of confusion claim during trial or in its brief, we find, in accordance with our usual practice, that the claim is waived. *Alcatraz Media, Inc. v. Chesapeake Marine Tours Inc.*, 107 USPQ2d 1750, 1753 n.6 (TTAB 2013).

We further note that a claim that an applicant is not the owner of a mark is not available against an application that is filed under Section 1(b) of the Trademark Act, as is the case here. *See Hole In 1 Drinks, Inc. v. Lajtay*, 2020 USPQ2d 10020 (TTAB 2020)⁴ and *Norris v. PAVE: Promoting Awareness, Victim Empowerment*, 2019 USPQ2d 370880 (TTAB 2019). Because there is technically no statutory basis for Opposer’s nonownership claim we give no further consideration to Opposer’s claim

² Application Serial No. 85942810, filed on May 25, 2013, based on an allegation of a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

³ Notice of Opposition; 1 TTABVUE.

⁴ “The same operative facts regarding parties claiming superior rights based on shared circumstances may support different claims depending on whether they arise in a use-based application, in which case the appropriate claim is lack of ownership, or in an intent-to-use application, in which case the appropriate claim is lack of bona fide intent to use.” *Hole In 1 Drinks, Inc.*, 2020 USPQ2d 370880 at *6.

that Applicant is not the exclusive owner of the involved mark. Thus, the only claim we entertain in this decision is Opposer's claim that Applicant did not have a bona fide intent to use the mark in commerce as of the filing date of her involved application.

In her answer, Applicant denies the salient allegations asserted in the notice of opposition.⁵

Additionally, Applicant asserts various putative "affirmative defenses," including that the notice of opposition fails to state a claim upon which relief may be granted.⁶ Insofar as Applicant neither filed a formal motion to dismiss for failure to state a claim, pursuant to Fed R. Civ. P. 12(b)(6) during the interlocutory phase of this proceeding, nor submitted a trial brief arguing this asserted defense, it is hereby deemed waived. *Alcatraz Media*, 107 USPQ2d at 1753 n.6. As for the remaining purported "affirmative defenses," we deem them mere amplifications of Applicant's denials in her answer. *See Order of Sons of Italy in America v. Profumi Fratelli Nostra AG*, 36 USPQ2d 1221, 1223 (TTAB 1995).

I. The Record

The record includes the pleadings and, pursuant to Trademark Rule 2.122(b), 37 C.F.R. § 2.122(b), Applicant's application file. The record also comprises the testimony and evidence summarized below.

A. Opposer's Evidence

1. Testimony declaration of Ek Ong Kar Kaur Khalsa, a member

⁵ Applicant's Answer, 7 TTABVUE 7-8.

⁶ Applicant's Answer; 7 TTABVUE 9-10.

trustee of Opposer, (“EOKKK Decl.”) and the following accompanying exhibits: (1) an amended living trust agreement concerning the assets of Harbhajan Singh Khalsa Yogiji, the deceased husband of Applicant, and (2) various intellectual property licensing agreements;⁷

2. Notice of reliance on the following: (a) a status and title copy of Registration No. 1980514 for the mark YOGI TEA for “tea,” owned by both Opposer and Applicant as joint registrants; (b) a status and title copy of Registration No. 3607292 for the mark YOGI for “tea,” owned by both Opposer and Applicant as joint registrants; (c) assignments of various YOGI trademarks from East West Tea Company to Applicant and Opposer as co-owners; (d) requests for admission Opposer propounded on Applicant deemed admitted on the ground that Applicant failed to respond or object to these requests; (e) various notices of opposition that Opposer maintains Applicant has deemed admitted (by failing to respond to the requests for admissions) are true and correct copies and are authentic for purposes of admission in this proceeding; (f) various newspaper articles downloaded from the Internet regarding Harbhajan Singh Khalsa Yogiji, Applicant’s deceased husband; (g) screenshots from the websites www.yogiproduts.com and www.yogibathandbeauty.com; (h) various court decisions wherein the courts found that Opposer and Applicant each have an undivided 50% interest in the mark YOGI in connection with health and wellness products.⁸
3. Rebuttal testimony declaration of Elizabeth Sbardellati, one of Opposer’s counsel with the following attached exhibits: status and title copies of application Serial Nos. 86137654 and 85920241, filed by Applicant, as an individual, and both for the mark YOGI for various goods in International Classes 25, 29, 30 and 31;⁹ and
4. Rebuttal notice of reliance on the following: (1) copy of canceled Registration No. 4412548 for the mark LITTLE YOGIS; (2) status and title copies of Registration Nos. 3595461 and 3595462 for the marks YOGI BOTANICALS ORGANIC SOLUTIONS and

⁷ 28 TTABVUE (confidential version); 32 TTABVUE (redacted version). We have identified the licensing agreements in a general fashion inasmuch as these agreements were submitted under seal as confidential.

⁸ 29-31 and 33 TTABVUE.

⁹ 36 TTABVUE.

YOGIBOTANICALS, respectively, each issued to Yogi Botanicals International Corporation, submitted to demonstrate that Applicant is not the owner of these two registrations.¹⁰

B Applicant's Evidence

1. Notice of Reliance on the following: (a) an online article titled "An Interview with Vinie Kaur – Founder of Yogi Bath & Beauty; (b) various decisions from state courts in the State of New Mexico; (c) various decisions from the U.S. District Court for the Central District of California and the United States District Court for the District of Oregon; (d) status and title copies of Registration Nos. 1980514, 4412548, 3595462, and 3595461 for the marks YOGI TEA, LITTLE YOGIS, YOGIBOTANICALS, and YOGI BOTANICALS ORGANIC SOLUTIONS, respectively, (e) various applications for YOGI marks, (f) screenshots from the website www.yogibathandbeauty.com purportedly showing bona fide use and offer for sale of bath and beauty products bearing the YOGI mark in association with the applied-for goods by and through Applicant's licensee; (g) various screenshots from www.amazon.com listing Yogi bath and beauty products; (h) screenshot from the Twitter account for Yogi Bath and Beauty Collection by Vines Ayurveda, and (i) the record of numerous Board opposition proceedings where Applicant, as opposer claiming rights in YOGI-formative marks, prevailed in the proceedings.

Applicant did not submit any witness or sworn statements during her assigned testimony period nor did she file a trial brief.

Additionally, both Opposer and Applicant, by way of notices of reliance, submitted printouts from various websites downloaded from the Internet. Although admissible for what they show on their face, *see* Trademark Rule 2.122(e)(2), 37 C.F.R. § 2.122(e)(2), this evidence is hearsay that may not be relied upon for the truth of the matters asserted unless supported by testimony or other evidence. Fed. R. Evid.

¹⁰ 35 TTABVue.

801(c); *Safer, Inc. v. OMS Invs., Inc.*, 94 USPQ2d 1031, 1039-40 (TTAB 2010); TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (“TBMP”) § 704.08(b) (2020) (“The probative value of Internet documents is limited. They can be used to demonstrate what the documents show on their face. However, documents obtained through the Internet may not be used to demonstrate the truth of what has been printed.”).

We also note that Opposer submitted evidence that has been designated confidential, in part, and filed under seal. We have discussed only in general terms the relevant evidence submitted under seal, if necessary and appropriate. However, to the extent Opposer has improperly designated evidence as confidential, we may disregard the confidential designation when appropriate. Trademark Rule 2.116(g), 37 C.F.R. § 2.116(g) (“[t]he Board may treat as not confidential that material which cannot reasonably be considered confidential, notwithstanding a designation as such by a party.”). *See also Couch/Braunsdorf Affinity, Inc. v. 12 Interactive, LLC*, 110 USPQ2d 1458, 1461 (TTAB 2014).

II. Evidentiary Objections

In an appendix attached to its trial brief, Opposer raises objections to certain evidence submitted by Applicant under her notice of reliance.¹¹ Specifically, Opposer objects to the submission of Registration No. 4412548 for the mark LITTLE YOGI because it has been canceled, arguing that canceled registrations have no probative

¹¹ Opposer’s Trial Brief, Appendix B; 37 TTABVUE 26-32.

value.¹² Additionally, Opposer objects to the submission of the remaining registrations submitted by Applicant on the ground that, while Applicant maintains that these registrations were issued for the benefit of Applicant, these registrations are owned by a third-party and Applicant has not submitted any testimony or any other evidence to support a relationship between the registrant of these registrations and Applicant.¹³ Finally, Opposer objects to the submission of the trademark applications submitted by Applicant on the ground that these applications, whether owned by a party or not, are generally of very limited probative value.¹⁴

With regard to Opposer's objections, the Board is capable of weighing the relevance and strength or weakness of the objected-to evidence in this case, including any inherent limitations, and this precludes the need to strike the challenged evidence on relevancy grounds. We have accorded the evidence whatever probative value it merits, keeping Opposer's objections in mind, and comment as needed on its probative value elsewhere in this opinion. *See Alcatraz Media Inc.*, 107 USPQ2d at 1755; *Kohler Co. v. Baldwin Hardware Corp.*, 82 USPQ2d 1100, 1104 (TTAB 2007). Thus, we decline to decide each and every individual objection and base our factual findings herein only on evidence that is admissible, properly of record and probative.

III. Background

Applicant is the widow of the late Harbhajan Singh Khalsa Yogiji, better known

¹² *Id.*; 37 TTABVUE 28.

¹³ *Id.*; 37 TTABVUE 28-30.

¹⁴ *Id.*; 37 TTABVUE 30-31.

to the American public as Yogi Bajan (“Yogi Bajan”).¹⁵ Yogi Bajan came to the United States from India in the late 1960s and began teaching Kundalini Yoga.¹⁶ Yogi Bajan’s teachings encouraged a healthy lifestyle. In order to promote that lifestyle, Yogi Bajan licensed his name and likeness, certain recipes, and the trademarks YOGI and YOGI TEA (collectively, “the Yogi Bajan Intellectual Property”) for the purpose of marketing and selling health and wellness products.¹⁷

At the time of his death, Yogi Bajan had two active licenses for the Yogi Bajan Intellectual Property: (1) a 2004 license agreement with Golden Temple of Oregon (“GTO”); and (2) a 1996 license agreement with GTO’s European affiliate, Amalgamated (collectively, the “GTO Agreements”).¹⁸ The goods licensed pursuant to the GTO Agreements included cereals, teas, perfumes, body oils, body scrubs and body butters.¹⁹

During his lifetime, Yogi Bajan and Applicant established a living trust (the “Living Trust”).²⁰ Pursuant to the Living Trust, upon Yogi Bajan’s death, the Living Trust’s assets were to be distributed into two subsequent trusts: (1) a Survivor’s Trust for the benefit of Applicant (the “Survivor’s Trust”); and (2) the YB Trust, for the

¹⁵ EOKKK Decl., ¶ 2; 32 TTABVUE 3.

¹⁶ *Id.*

¹⁷ *Id.* at ¶ 6, 27-28 and accompanying Exh. YB 2-3; 32 TTABVUE 4 and 8; and 28 TTABVUE 42-93 (confidential version).

¹⁸ *Id.* at ¶ 19, and accompanying Exh. YB 2-3; 32 TTABVUE 7; and 28 TTABVUE 42-93 (confidential version).

¹⁹ *Id.* at ¶ 17; 32 TTABVUE 6.

²⁰ *Id.* at ¶ 9; 32 TTABVUE 5.

benefit of Opposer.²¹ The Living Trust provided that should Yogi Bhajan predecease Applicant, the successor Trustees would: (1) distribute into the Survivor's Trust Applicant's share of the Living Trust assets, including her 50% community property share and other assets specifically bequeathed to her; and (2) once all other distributions had been made, distribute Yogi Bhajan's residual share of Living Trust assets, held in the YB Trust, to an entity called Staff Endowment, LLC.²² The Yogi Bhajan Intellectual Property was among the assets of the Living Trust at the time of Yogi Bhajan's death.²³

The assets distributed to the Survivor's Trust included an undivided 50% interest in the Yogi Bhajan Intellectual Property and a right to 50% of the royalties generated by the GTO Agreements.²⁴ Opposer holds the remaining undivided 50% interest in the Yogi Bhajan Intellectual Property.²⁵ Unsatisfied with the distribution she received, Applicant made claims against the Trustees and Opposer asserting that she was entitled to more than 3.7 million dollars in assets, including a more than 50% interest in the Yogi Bhajan Intellectual Property.²⁶

In 2007, the successor Trustees brought an action for declaratory relief in New Mexico state court titled *Khalsa v. Puri*, D-101-CV-2007-2431 (the "New Mexico

²¹ *Id.*

²² *Id.* at ¶10; 32 TTABVUE 5.

²³ *Id.* at ¶¶ 18-22; 32 TTABVUE 6-7.

²⁴ *Id.* at ¶¶ 21-22; 32 TTABVUE 7.

²⁵ *Id.*

²⁶ *Id.* at ¶¶ 11-12, 23, and 25; 32 TTABVUE 5 and 7-8.

Action”).²⁷ Applicant filed a counterclaim against the Trustees for an accounting, breach of trust, breach of fiduciary duty and for the removal of certain Trustees due to alleged conflicts of interest; Applicant’s counterclaim was presided over by Judge Singleton.²⁸ Applicant asserted that, contrary to Yogi Bhajan’s directives, she was owed more than 50% of the Living Trust assets, including a greater than 50% interest in the Yogi Bhajan Intellectual Property.²⁹ Ultimately, Judge Singleton ruled in favor of the Trustees. The court held that Applicant and Opposer each owned an undivided 50% interest in the Yogi Bhajan Intellectual Property, and confirmed that they are equal co-owners of the Yogi Marks (the “New Mexico Judgment”).³⁰ (“The Court finds, therefore, that the relationship between [Opposer] and [Applicant] as it related to the IP interests under discussion is that of co-owners of the mark.”).³¹

Following Applicant’s appeal, the New Mexico Court of Appeals upheld the lower court’s ruling in all respects.³² On January 14, 2015, the Supreme Court of New Mexico denied Applicant’s petition for writ of certiorari, which left the lower court decisions undisturbed, conclusively determining that Applicant and Opposer are

²⁷ *Id.* at ¶ 24; 32 TTABVUE 7-8.

²⁸ *Id.* at ¶¶ 24-25; 32 TTABVUE 7-8.

²⁹ *Id.*

³⁰ *Id.* at ¶ 26; 32 TTABVUE 8, and Opposer’s Notice of Reliance, Exh. YB 6 at p. 14; 33 TTABVUE 20.

³¹ Opposer’s Notice of Reliance, Exh. YB 7 at page 31 at ¶¶ V, X, AA, 33 TTABVUE 61; Exh. YB 8; 33 TTABVUE 67-70.

³² Opposer’s Notice of Reliance, Exh. YB 9 at pages 1, 19:6-19, 20:4-12 and 41:16-17; 33 TTABVUE 74, 92-93, and 114.

equal co-owners of the Yogi Bhajan Intellectual Property.³³

Applicant brought separate actions related to the Yogi Bhajan Intellectual Property in both the United States District Courts for the District of Oregon and the Central District of California.³⁴ Each of those courts addressed the issue of ownership of the Yogi Bhajan Intellectual Property and each concluded that it was bound by the New Mexico Judgment, i.e., that both Applicant and Opposer share an undivided 50% ownership interest in all of the Yogi Intellectual Property.³⁵

IV. Preliminary Matter – Applicant’s Combined Motion to Suspend for Civil Action and to Reopen Time to File a Trial Brief

The deadline for Applicant’s trial brief in this case was November 16, 2018.³⁶ Applicant did not file her trial brief by the deadline. Instead, on July 25, 2019 (approximately eight months after her trial brief was due), Applicant filed a combined motion to suspend this proceeding pending the disposition of a civil action and to reopen her time to file her trial brief. By order dated July 26, 2019, the Board, while noting that it will not generally suspend proceedings for civil action after trial and briefing have closed, nonetheless allowed Applicant time in which to file a revised combined motion to suspend and to reopen because Applicant failed to (1) submit the operative pleadings in the civil action, and (2) set forth any argument or explanation

³³ Opposer’s Notice of Reliance. Exh. YB 10; 33 TTABVUE 116-17.

³⁴ EOKKK Decl., ¶¶31- 32; 32 TTABVUE 9; Opposer’s Notice of Reliance, Exhs. YB 11-12, 33 TTABVUE 118-159.

³⁵ Opposer’s Notice of Reliance, Exhs. YB 11-12; 33 TTABVUE 118-159.

³⁶ See revised trial schedule set forth in the Board’s August 16, 2017 order; 27 TTABVUE 2.

as to how the disposition of the civil action and subsequent appeal would have a bearing on this opposition proceeding.³⁷

On August 9, 2019, Applicant filed her revised combined motion.³⁸ Opposer filed an opposition to the revised combined motion on August 29, 2019.³⁹

We initially turn to the portion of the combined revised motion that concerns Applicant's request to suspend for civil action. In support thereof, Applicant argues that during oral argument before the U.S. Court of Appeals for the Ninth Circuit in a litigation between one of Opposer's licensees and Applicant, counsel for Opposer's licensee admitted that "Applicant was entitled to license whomever she wished without conflict with Licensor's rights [i.e., Opposer's], including for identical goods."⁴⁰ Applicant argues that the admission that Applicant is free to make commercial use of the mark herself undercuts Opposer's claim that she does not have

³⁷ 40 TTABVUE.

³⁸ 41 and 42 TTABVUE.

³⁹ 43 TTABVUE. We note that Opposer filed a supplemental response to Applicant's revised combined motion on November 26, 2019 based on newly discovered evidence. *See* 45 TTABVUE. In its supplemental response, Opposer maintains that during cross-examination of Applicant's counsel on a motion for sanctions in a proceeding brought by Opposer against Applicant captioned *Khalsa v. Puri*, D-101-CV-2007-02431, Applicant's counsel testified that Applicant does not in fact own any interest in the Yogi Bhajan Intellectual Property. Rather, Applicant's counsel testified that the 50% undivided interest once held by Applicant is now held by an unidentified irrevocable trust. *Id.* at 2-3; *see also* accompanying Declaration of Maureen Sanders, one of Opposer's counsel, and attached Exh. YB A. We note that Applicant did not respond to Opposer's supplemental response. Notwithstanding, whether or not Applicant has retained her undivided 50% interest in the Yogi Bhajan Intellectual Property or whether such undivided interest has been assigned to "an unidentified irrevocable trust," is of no consequence and does not detract from our determination as to whether Applicant had a bona fide intent to use the involved mark **as of the filing date of the subject application.**

⁴⁰ 41 TTABVUE 3.

a bona fide intention to use her involved mark in commerce.⁴¹

In response, Opposer argues that, during oral argument, counsel for Opposer's licensee merely stated that the license was "exclusive" only as to Opposer's undivided 50% interest in the YOGI marks and that the license did not restrict Applicant's right to license her undivided 50% interest in the YOGI marks.⁴² As such, Opposer argues that not only does the Ninth Circuit proceeding have absolutely no bearing on the current opposition, counsel's statement was entirely consistent with the position taken by Opposer throughout this opposition proceeding.⁴³

More specifically, Opposer contends that it has never claimed that Applicant is not a co-owner of the YOGI marks.⁴⁴ Rather, Opposer opposed the pending application because in filing the application, Applicant ignored Opposer's undivided 50% interest in the Yogi marks, even though she has concedes that she is a co-owner of the YOGI marks, not the exclusive owner.⁴⁵

We agree with Opposer. This proceeding concerns the registrability, not the commercial use, of Applicant's involved mark. The Board's jurisdiction is limited in determining the registrability of a mark, see *Conolty v. Conolty O'Connor NYC LLC*, 111 USPQ2d 1302, 1309 (TTAB 2014); *Blackhorse v. Pro-Football, Inc.*, 111 USPQ2d 1080, 1082-83 (TTAB 2014), and is not authorized to determine the right to use, nor

⁴¹ *Id.*

⁴² 43 TTABVUE 5.

⁴³ *Id.*

⁴⁴ 43 TTABVUE 6.

⁴⁵ *Id.*

may it decide broader questions of infringement or unfair competition. *FirstHealth of the Carolinas Inc. v. CareFirst of Md. Inc.*, 479 F.3d 825, 81 USPQ2d 1919, 1921 (Fed. Cir. 2007).

The record is clear that both Opposer and Applicant own an undivided 50% interest in the Yogi Intellectual Property. Applicant concedes as much.⁴⁶ Notwithstanding, Applicant is free to license her undivided 50% interest in the Yogi Intellectual Property to any licensee she chooses. Opposer does not contest her ability to do so.⁴⁷ The issue before us, however, is whether Applicant may register the involved mark in her own name as an individual and not whether she has the right to license her undivided interest in the mark. Thus, we do not find that the purported admission made by counsel for Opposer's licensee has any bearing on this case. Accordingly, Applicant's motion to suspend for civil action is denied.

We next turn to the portion of Applicant's revised combined motion concerning her request to reopen her time to file a trial brief. In order to reopen her now-expired time for submitting a trial brief, Applicant must establish that her failure to timely file her trial brief was the result of "excusable neglect." *See* Fed. R. Civ. P. 6(b)(1)(B). *See also Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 USPQ2d 1848, 1852 (TTAB 2000). In support of her motion to reopen, Applicant merely argues that, to the extent the Board suspends this proceeding for civil action, she should then be entitled to file her trial brief in order to avoid an adverse finding by the Board based

⁴⁶ 41 TTABVUE 9.

⁴⁷ 43 TTABVUE 5.

on the civil action.⁴⁸ However, the record demonstrates that the oral hearing in the civil action took place on June 5, 2019, approximately seven months after the deadline to file her trial brief.⁴⁹ Applicant has provided no explanation why she failed to file a timely brief in the first instance by the set deadline. Thus, Applicant has failed to establish the requisite “excusable neglect” for reopening the time to file her brief. Accordingly, Applicant’s motion to reopen is denied.⁵⁰

V. Standing

Standing is a threshold issue that must be proven by the plaintiff in every inter partes case. *See Empresa Cubana Del Tabaco v. Gen. Cigar Co.*, 753 F.3d 1270, 111 USPQ2d 1058, 1062 (Fed. Cir. 2014); *Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 189 (CCPA 1982) (“The facts regarding standing . . . must be affirmatively proved. Accordingly, [plaintiff] is not entitled to standing solely because of the allegations in its [pleading].”). Our primary reviewing court, the U.S. Court of Appeals for the Federal Circuit, has enunciated a liberal threshold for determining standing, namely that a plaintiff must demonstrate that it possesses a

⁴⁸ 41 TTABVUE 6.

⁴⁹ 41 TTABVUE 5.

⁵⁰ Applicant also requests that this opposition be dismissed with prejudice. Specifically, Applicant states that “[a]lternatively, should the Board find that there is no connection to the cited case on appeal due to the different nature of the goods, then [Applicant] also requests dismissal of the opposition with prejudice.” *See* 41 TTABVUE 13. Here, we have denied Applicant’s request to suspend for civil action not because we have found that the civil action concerned goods that are different in nature from the goods identified in the involved application, but because the purported admission made by counsel for Opposer’s licensee, i.e., that Applicant has the right to license her undivided interest in the YOGI marks, has no bearing on the issues before us. Thus, the basis for Applicant’s dismissal request is without merit and, therefore, we have given it no consideration.

“real interest” in a proceeding beyond that of a mere intermeddler, and “a reasonable basis for his belief of damage.” *Empresa Cubana Del Tabaco*, 111 USPQ2d at 1062 (citing *Ritchie v. Simpson*, 170 F.3d 1902, 50 USPQ2d 1023, 1025-26 (Fed. Cir. 1999)). To prove a “real interest” in this case, Opposer must show that it has a “direct and personal stake” in the outcome herein and is more than a “mere intermeddler.” See *Ritchie v. Simpson*, 50 USPQ2d at 1026; see also *Jewelers Vigilance Committee Inc. v. Ullenberg Corp.*, 853 F.2d 888, 7 USPQ2d 1628 (Fed. Cir. 1988).

Opposer has demonstrated, through the uncontroverted testimony declaration of its member trustee, as well as various other evidence, including state and federal district court decisions, that Opposer has an undivided 50% interest in YOGI-formative marks for health and beauty products.⁵¹

We find this testimony and evidence sufficient to demonstrate that Opposer is not a mere intermeddler but has a direct and personal stake in this proceeding and, therefore, has a reasonable basis for its belief of damage stemming from the registration of Applicant’s involved mark.

VI. Lack of a Bona Fide Intent to Use

The sole issue before us is whether Applicant had a bona fide intent to use the YOGI mark in her capacity as an individual upon the date she filed her involved intent-to-use application. The record clearly demonstrates that, at the time Applicant filed her application, both Opposer and Applicant had an **undivided** 50% interest in

⁵¹ EOKKK Decl., ¶¶ 17 and 26, 32 TTABVUE 6 and 8; Opposer’s Notice of Reliance, Exhs. YB 6-8 and 11-12, 33 TTABVUE 20, 61, 67-70 and 118-159.

the Yogi Bhajan Intellectual Property which includes the mark YOGI for various health and wellness products, including perfumes, body oils, body scrubs, herbal therapy oils, and body butters.⁵² As previously noted, Applicant has conceded that she only has an undivided 50% interest in the Yogi Bhajan Intellectual Property.⁵³

Applicant, however, did not file her application in the names of both Opposer and herself, as joint applicants, each of whom have an equal undivided interest in the subject mark for the involved goods. Nor did she obtain the consent of Opposer to file her application. Instead, Applicant filed her application in her name alone as an individual.

Moreover, the declaration submitted with Applicant's involved application is not accurate to the extent it states that Applicant is entitled to use the involved mark in commerce because, to the best of her knowledge and belief, "no other person, firm, corporation or association has the right to use the mark in commerce, either in the identical form." Based on the evidence of record, including the New Mexico Judgment, Applicant cannot, as a matter of law, assert that no other persons have the right to use the applied-for-mark in commerce where the evidence clearly demonstrates that Opposer also has an undivided 50% interest in the involved mark.

Notwithstanding the foregoing, the record shows that Applicant has relied on registrations for YOGI marks owned by both Opposer and Applicant, as joint registrants, in instituting oppositions against third parties seeking to register YOGI-

⁵² *Id.*

⁵³ 41 TTABVUE 9.

formative marks. For example, Applicant filed an opposition to an application for the mark YOGI FAIR covering various personal care and bath and body products in which she relied on her prior existing rights in Registration. Nos. 180514⁵⁴ and 3435101 (now cancelled),⁵⁵ which make up part of the Yogi Bhajan Intellectual Property and are co-owned with the Opposer.⁵⁶ Likewise, in her opposition to an application for the mark YOGI VITALITY covering various health and wellness products, Applicant cited the same co-owned marks.⁵⁷ Finally, Applicant has gone so far as to rely on registrations she co-owns with Opposer in opposing applications covering goods outside of health and wellness products, including clothing.⁵⁸ It is evident that Applicant's reliance on registrations for YOGI marks owned by both Applicant and Opposer, as joint registrants, demonstrates that her rights in the mark YOGI generally are not solely attributable to her as an individual but are derived from her 50% undivided interest in the Yogi Bhajan Intellectual Property, in which Opposer also has an undivided 50% interest.⁵⁹

⁵⁴ Opposer's Notice of Reliance, Exh. YB 13; 29 TTABVUE 4-9.

⁵⁵ *Id.* at Exh. YB 15; 29 TTABVUE 15-

⁵⁶ *Id.* at Exh. YB 17; 30 TTABVUE 19-39.

⁵⁷ *Id.* at Exh. YB 18; 30 TTABVUE 40-55.

⁵⁸ *Id.* at Exh. YB 19; 30 TTABVUE 56-62.

⁵⁹ We note that Applicant submitted registrations owned by third-parties, i.e., Yogi Botanicals International Corp., Wai Lana Productions, and East West Tea Company, contending that the registrations were issued for Applicant's benefit. *See* Applicant's Notice of Reliance, Exhs. A-E; 34 TTABVUE 11-21. Applicant, however, did not submit any testimony or other evidence demonstrating any relationship with these third parties. Accordingly, Applicant's reliance on these registrations to purportedly demonstrate any individual rights in YOGI-formative marks is unavailing.

While we acknowledge that some of the goods identified in Applicant's involved

We have previously found that “[i]n a use-based application under Trademark Act Section 1(a), only the owner of the mark may file the application for registration of the mark; if the entity filing the application is not the owner of the mark as of the filing date, the application is void ab initio.” *Great Seats, Ltd. v. Great Seats, Inc.*, 84 USPQ 2d 1235, 1239 (TTAB 2007). Likewise, we have held that where not all owners of a trademark have consented to the filing of a use-based application, the application is void ab initio. *See, e.g., Kristin Marie Conolty d/b/a Fairway Fox Golf v. Conolty O’Connor NYC LLC*, 111 USPQ2d 1302, 1310 (TTAB 2014) (“[T]he record makes clear that Applicant...is not the sole owner of the FAIRWAY FOX trademark...The opposition is sustained and...[t]he involved application is void ab initio.”).

With regard to intent-to-use applications, as is the case here, we have previously held that such applications should not be treated more leniently than use-based applications. *See American Forests v. Sanders*, 54 USPQ 2d 1860, 1864 (TTAB 1999) *aff’d*, 232 F. 3d 907 (Fed. Cir. 2000) (“Obviously, the application at issue in the instant case is an intent to use application, and had the application been a use based application, and had the application been filed in the name of Barbara Sanders...when the owner of the mark...was another entity...then...the application would have been void ab initio as having been filed in the name of someone other

application may not be identical to those offered for sale under the marks that comprise the Yogi Bhanan Intellectual Property, our determination as to whether Applicant had a bona fide intent to use the applied-for mark at the time she filed her application in her individual capacity is not affected by any differences in the goods. Indeed, we find that all the goods identified in the involved application are sufficiently similar health and wellness products to those that comprise the Yogi Bhanan Intellectual Property.

than the owner of the mark. **We see no valid reason for granting greater leeway to intent to use applicants.**”) (emphasis added).

The rationale in *American Forests* is equally applicable to the circumstances in this case. The record shows that at the time Applicant filed her intent-to-use application, both Opposer and Applicant possessed an undivided 50% interest in the Yogi Bhajan Intellectual Property which includes the mark YOGI for various health and wellness products. But yet, Applicant filed the application in her name only as an individual without Opposer’s consent. Since both Opposer and Applicant had an equal undivided interest in the mark at issue, the application should have been filed in the names of both Opposer and Applicant, as joint applicants. It was not.

Thus, we find that Opposer has demonstrated, by a preponderance of the evidence, that Applicant did not have a bona fide intent to use the mark in commerce solely in her individual capacity at the time she filed her involved because, at such time, Applicant was aware that both Opposer and Applicant each had an undivided and equal interest in the applied-for mark for the identified goods. Accordingly, we find that the involved application is void ab initio.

Decision: The opposition is sustained and registration to Applicant is refused.