

This Opinion is Not a  
Precedent of the TTAB

Mailed: August 1, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

—  
Trademark Trial and Appeal Board  
—

*Allright Mind Enterprises Ltd.*  
*v.*  
*Creative Arts By Calloway, LLC*

—  
Opposition No. 91273573  
—

Kathryn Jennison Shultz, of Jennison & Shultz, P.C.,  
for Allright Mind Enterprises Ltd.

Alexander Butterman and Michael Shafer, of Dunlap Bennett & Ludwig PLLC,  
for Creative Arts By Calloway, LLC.

—  
Before Larkin, Casagrande, and Myles,  
Administrative Trademark Judges.

Opinion by Casagrande, Administrative Trademark Judge:<sup>1</sup>

---

<sup>1</sup> This opinion is issued as part of an internal Board pilot citation program on broadening acceptable forms of legal citation in Board cases. Legal citations in this opinion are in a form provided in the TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (“TBMP”) § 101.03 (2024). Decisions of the U.S. Court of Appeals for the Federal Circuit and the U.S. Court of Customs and Patent Appeals are cited only by the page(s) on which they appear in the Federal Reporter (e.g., F.2d, F.3d, or F.4th). Westlaw (WL) citations are used for decisions of the Board. Practitioners should also adhere to the practice set forth in TBMP § 101.03.

Creative Arts By Calloway, LLC (Applicant) filed an intent-to-use application to register the mark REEFER MAN (“REEFER” disclaimed), in standard characters, on the Principal Register for the following goods and services:

Smoker’s articles, namely, ashtrays, cigarette papers, electronic cigarettes, herbs for smoking, tobacco, matches, lighters, tobacco jars, cigarette holders, cigarette cases, liquid nicotine, oral vaporizers for smokers, all of the forementioned goods that contain or are intended for use with cannabis have that cannabis solely derived from hemp with a delta-9 tetrahydrocannabinol THC concentration of not more than 0.3 percent on a dry weight basis, in International Class 34; and

Educational services, namely, conducting classes, programs, conferences, workshops, seminars, and presentations in the fields of social justice and legal education, in International Class 41.<sup>2</sup>

Allright Mind Enterprises Ltd. (Opposer) opposed registration. Opposer’s Notice of Opposition alleges priority and likelihood of confusion under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).<sup>3</sup> Opposer pleaded ownership of two intent-to-use applications for the mark REEFERMAN GENETICS (“GENETICS” disclaimed).<sup>4</sup>

Opposer’s Application Serial No. 85984387 currently identifies the following goods and services:

Plant nutrients, namely, plant foods and food supplements for plant growth and biotechnologically-formed genes, microbes and enzymes for use in the production of agricultural seeds to

---

<sup>2</sup> Application Serial No. 90043340 was filed on July 9, 2020, based upon Applicant’s 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).

<sup>3</sup> See 1 TTABVUE. Citations in this opinion to filings in proceedings before the Board are to TTABVUE, the Board’s online docketing system. The number preceding “TTABVUE” corresponds to the docket entry number, and any numbers following TTABVUE refer to the page(s) of the docket entry, as paginated by TTABVUE, where any specifically cited portions of the document appear.

<sup>4</sup> See 1 TTABVUE 2-3, 5-7.

enhance plants' growth therefrom none of which are designed for use or primarily intended for use in the production of [Cannabis] sativa L, in International Class 1;

Plant seeds, live cuttings from young plants, and live plants none of the foregoing including Cannabis sativa L, in International Class 31; and

Wholesale and retail stores and online wholesale and retail stores featuring plant seeds, plant cuttings and live plants none of the foregoing including Cannabis sativa L; Wholesale and retail stores and online wholesale and retail stores featuring garden supplies, plant nutrients and supplements and greenhouse supplies, namely, growing lights, glass enclosures, plant containers, greenhouse kits, herb crushers and hand-held herb presses and promotional goods, namely, coffee mugs, key fobs, wristbands, t-shirts, headbands, hats, badges, pins, pens and carry bags with none of the foregoing designed for use or primarily intended for use in the production, manufacture, processing, preparation or inhalation of Cannabis sativa L; Wholesale and retail stores and online wholesale and retail stores featuring books and clothing, in International Class 35.<sup>5</sup>

Opposer's Application Ser. No. 85938708 currently identifies the following goods and services:

Plant seeds, live cuttings from young plants, live plants any and all Cannabis [sativa] L plants, cuttings and seeds do not have a delta-9 tetrahydrocannabinol (THC) content of more than 0.3 percent on a dry weight basis, in International Class 31; and

Wholesale and retail stores and online wholesale and retail stores featuring plant seeds, plant cuttings and live plants none of the foregoing including Cannabis sativa L with a delta-9

---

<sup>5</sup> The USPTO file for Application Serial No. 85984387 lists a filing date of December 20, 2018, and indicates the application was filed under Sections 1(b), alleging a bona fide intent to use the mark, and 44e, 15 U.S.C. § 1126(e), based on prior-filed Canadian Application No. 1603442. Opposer's '387 Application was filed after enactment of the 2018 Farm Bill, which removed restrictions as to certain hemp and hemp-derived products, and is the child application, of Opposer's Application Serial No. 85938708. *See generally* Trademark Examination Guide 1-19 (available at <https://www.uspto.gov/sites/default/files/documents/Exam%20Guide%201-19.pdf>).

tetrahydrocannabinol (THC) content of more than 0.3 percent on a dry weight basis; Wholesale and retail stores and online wholesale and retail stores featuring garden supplies, plant nutrients and supplements and greenhouse supplies, namely, growing lights, glass enclosures, plant containers, greenhouse kits, herb crushers and hand-held herb presses and promotional goods, namely, coffee mugs, key fobs, wristbands, t-shirts, headbands, hats, badges, pins, pens and carry bags with none of the foregoing designed for use or primarily intended for use in the production, manufacture, processing, preparation or inhalation of Cannabis sativa L with a delta-9 tetrahydrocannabinol (THC) content of more than 0.3 percent on a dry weight basis; Wholesale and retail stores and online wholesale and retail stores featuring books and clothing, in International Class 35.<sup>6</sup>

Applicant filed an answer denying the salient allegations in the Notice of Opposition and asserting the following affirmative defenses:

- Opposer's claim is barred because Opposer's product are marijuana products and cannot legally be sold in the United States under the Controlled Substances Act, 21 U.S.C. §§ 801-971 (CSA);
- Opposer is without the required bona fide intent to use its mark under Section 1(b) of the Act because its products are marijuana products that cannot lawfully be sold in the United States under the CSA; and
- Opposer has unclean hands because it cannot lawfully sell the products listed in its applications in the United States.<sup>7</sup>

---

<sup>6</sup> The USPTO file for Application Serial No. 85938708 lists a filing date of May 21, 2013, under Sections 1(b), alleging a bona fide intent to use the mark, and 44e, 15 U.S.C. § 1126(e), based on prior-filed Canadian Application No. 1603442.

<sup>7</sup> See 4 TTABVUE 4-5 (second, third, and fourth affirmative defenses). Applicant also incorrectly denominated several other allegations as "affirmative defenses." Its assertion that the Notice of Opposition fails to state a claim, *see id.* at 4, is not an affirmative defense. *See, e.g., Shenzhen IVPS Tech. Co. v. Fancy Pants Prods., LLC*, Opp. No. 91263919, 2022 WL 16646840, at \*1 n.5 (TTAB 2022). Its allegation that Opposer lacks "standing," *see* 4 TTABVUE 4, is merely an amplification of Applicant's denial of Opposer's allegation in paragraph 15 of the Notice of Opposition, *see* 1 TTABVUE 8, that Opposer is likely to be damaged by registration of Applicant's mark. *See, e.g., Empresa Cubana Del Tabaco v. Gen. Cigar Co.*, Canc. No. 9202585, 2022 WL 17844056, at \*2 n.14 (TTAB 2022) (lack of standing/statutory entitlement not an affirmative defense); *U.S. Olympic Comm. v. Tempting Brands Neth. B.V.*, Opp. No. 91233138, 2021 WL 465324, at \*2 (TTAB 2021) (same).

Both parties filed trial briefs,<sup>8</sup> and Opposer filed a rebuttal brief.<sup>9</sup> The case is now ready for decision. For the reasons explained below, we dismiss the opposition.

## I. 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 challenged application. During its trial period, Opposer submitted:

- A First Notice of Reliance attaching a current copy of information from the electronic database records of the Office showing the current status and title of its two asserted U.S. applications, a copy of a Canadian Trademark Registration No. TMA992837 for REEFERMAN GENETICS, and Applicant's Responses to Opposer's First Set of Requests for Admission;<sup>10</sup>
- A Second Notice of Reliance attaching Applicant's Responses To Opposer's First Set Of Interrogatories;<sup>11</sup> and
- A Third Notice of Reliance attaching various third-party webpages concerning various cannabis business-related events.<sup>12</sup>

Applicant submitted the following during its trial period:

---

Applicant's sixth putative affirmative defense comprises allegations that Applicant, notwithstanding its later-filed application, has priority based on its predecessor's use analogous to trademark use dating back to the 1930s. *See* 4 TTABVUE 6-7. This, too, is merely an amplification of its denial of Opposer's Section 2(d) claim, a necessary element of which is priority. *See, e.g., Media Online Inc. v. El Clasificado, Inc.*, Canc. No. 92047294, 2008 WL 4419361, at \*5 (TTAB 2008). *See generally Germain v. US Bank Nat'l Ass'n*, 920 F.3d 269, 273 n.14 (5th Cir. 2019) (an affirmative defense "assumes the plaintiff proves everything he alleges and asserts, even so, the defendant wins") (citation omitted).

<sup>8</sup> *See* 24 TTABVUE (Opposer's trial brief); 25 TTABVUE (confidential version of Applicant's trial brief); 26 TTABVUE (redacted, public version of Applicant's trial brief); 27 TTABVUE (Opposer's rebuttal brief).

<sup>9</sup> *See* 27 TTABVUE.

<sup>10</sup> 16 TTABVUE.

<sup>11</sup> 17 TTABVUE.

<sup>12</sup> 18 TTABVUE.

- The Declaration of Joshua Langsam, Manager of Applicant, with attached exhibits A–Q;<sup>13</sup> and
- A Notice of Reliance attaching exhibits including the full file histories of Opposer’s two asserted applications, Opposer’s Responses to Applicant’s First Set of Interrogatories To Opposer, webpages from Opposer’s website, webpages from third-party websites selling and/or promoting seeds of various cannabis strains developed by Opposer, third-party webpages with information on seeds and strains of cannabis.<sup>14</sup>

## II. Statutory Entitlement to Oppose

In every inter partes case, the plaintiff must establish its entitlement to have invoked the statutory proceeding it filed. Here, that statute is the opposition statute, 15 U.S.C. § 1063. This requires the plaintiff to demonstrate: (i) an interest falling within the zone of interests protected by the statute; and (ii) proximate causation. *Corcamore, LLC v. SFM, LLC*, 978 F.3d 1298, 1303 (Fed. Cir. 2020) (citing *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 120-37 (2014)); *id.* at 1305 (applying *Lexmark* to inter partes TTAB cases). Demonstrating a real interest in opposing registration of a mark satisfies the zone-of-interests requirement, and demonstrating a reasonable belief in damage by the registration of a mark demonstrates damage proximately caused by registration of the mark. *Id.* at 1305-06; *see* 15 U.S.C. § 1063 (“Any person who believes that he would be damaged by the registration of a mark upon the principal register ... may ... file an opposition”).

Opposer has alleged it owns two pending applications and introduced printouts from the Office’s TSDR database reflecting its ownership and the current status of

---

<sup>13</sup> 19 TTABVUE (redacted, public version); 21 TTABVUE (confidential version).

<sup>14</sup> 20 TTABVUE.

those applications. Opposer plausibly claims that Applicant's application to register a similar mark for arguably related goods and services creates a likelihood of confusion as to source in view of the mark in Opposer's applications. This establishes Opposer's entitlement to bring this opposition proceeding. *See, e.g., Toufigh v. Persona Parfum, Inc.*, Canc. No. 92048305, 2010 WL 2783900, at \*2-3 (TTAB 2010) (plaintiff had reasonable belief of damage where he alleged that defendant's registered mark was likely to confuse in view of his application to register the same mark for arguably related goods or would hinder him in using or registering his mark).

Applicant argues that Opposer lacked the required bona fide intent to have filed its two intent-to-use applications, rendering those applications invalid. Applicant asserts that, as a consequence, Opposer cannot prove entitlement to invoke a statutory opposition proceeding.<sup>15</sup> We disagree. The requirement to prove statutory entitlement to oppose does not require a valid interest in a U.S. application or registration. It requires only a "legitimate commercial interest" in the mark at issue. *See, e.g., Luca McDermott Catena Gift Tr. v. Fructuoso-Hobbs SL*, 102 F.4th 1314, 1325 (Fed. Cir. 2024) (citations omitted). While the lack of bona fide intent may invalidate Opposer's asserted applications—and as we discuss below, we agree with Applicant that Opposer's applications are invalid—Applicant does not disagree that Opposer is selling goods under its mark via a website that U.S. consumers may access and filed its first application 11 years ago, prosecuting it and its offspring application

---

<sup>15</sup> *See* 26 TTABVUE 19-21.

to this day. This shows that Opposer has a legitimate commercial interest in the mark at issue and is not a “mere intermeddler[ ] or ... meddlesome part[y] acting as [a] self-appointed guardian[ ] of the purity of the Register,” *see id.* (citation omitted), which are the sorts of litigants the statutory entitlement requirement excludes.

### III. Analysis

Now that we have determined that Opposer is entitled to bring an opposition proceeding against Applicant’s application, we turn to the merits. As noted, Opposer’s sole claim is made under Section 2(d) of the Trademark Act, which prohibits registration of a mark that “so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive.” 15 U.S.C. § 1052(d).

Opposer does not allege that it “previously used” its REEFERMAN GENETICS mark in the United States, nor does it allege ownership of a U.S. registration. But Opposer does allege it owns a pending intent-to-use application that it originally filed in 2013.<sup>16</sup> Opposer may rely on the filing date of its application to establish priority under the constructive use provisions of Section 7(c) of the Trademark Act. *See Larami Corp. v. Talk To Me Programs Inc.*, Opp. No. 91085987, 1995 WL 743672, at \*5 n.7 (TTAB 1995) (“An opposer may rely on Section 7(c) to establish priority if it

---

<sup>16</sup> It also alleges ownership of an intent-to-use application with an amended filing date of December 20, 2018, that Opposer divided out of the original 2013 application. *See* 20 TTABVUE 65-66.



owns a registration for the mark it is asserting under Section 2(d) or if it has filed an application for registration of that mark.”<sup>17</sup>

But where, as here, a plaintiff relies on applications to provide constructive priority in a Section 2(d) claim, a defendant may assert defenses alleging the invalidity of the plaintiff’s asserted applications. *See Salacuse v. Ginger Spirits, Inc.*, Canc. No. 92024813, 1997 WL 687374, at \*3 (TTAB 1997). In *Salacuse*, the defendant asserted a defense alleging that the plaintiff lacked the bona fide intent to use its asserted mark on the goods identified in the plaintiff’s asserted applications. Because constructive priority based on the applications was an element of the plaintiff’s Section 2(d) claim, the Board held that “respondent’s allegation in its affirmative defense that petitioner’s applications are invalid is sufficient, if proven, to defeat petitioner’s Section 2(d) claim in this case.” *Id.* at \*3.<sup>18</sup> Here, Applicant’s second and third affirmative defenses assert that Opposer lacks a bona fide intent to use REEFERMAN GENETICS because Opposer’s only use of the mark so far has been in Canada and has only been in connection with goods that are unlawful under the CSA.<sup>19</sup>

---

<sup>17</sup> We note, however, that if such a plaintiff “could demonstrate likelihood of confusion, it cannot prevent the issuance of a registration to applicant on this ground until its own application is registered, thereby perfecting its priority.” *Spirits Int’l, B.V. v. S.S. Taris Zeytin Ve Zeytinyagi Tarim Satis Kooperatifleri Birligi*, Opp. No. 91163779, 2011 WL 2909909, at \*4 (TTAB 2011).

<sup>18</sup> The *Salacuse* decision further noted, however, that even if the defendant proved that the plaintiff’s asserted applications were invalid, that “would not be a basis for taking any official action with respect to petitioner’s applications (because the Board lacks jurisdiction in this proceeding to take such action, e.g., to declare petitioner’s applications void for lack of bona fide intention to use) ....” *Id.*

<sup>19</sup> *See* 4 TTABVUE 4-5.

Trademark Act Section 1(b) provides that “a person who has a bona fide intention, under circumstances showing the good faith of such person, to use a trademark in commerce may request registration of its trademark ....” 15 U.S.C. § 1051(b).<sup>20</sup> “Because a bona fide intent to use the mark in commerce is a statutory requirement of a valid intent-to-use trademark application under Section 1(b), the lack of such intent is a basis on which” such an application may be challenged. *M.Z. Berger & Co. v. Swatch AG*, 787 F.3d 1368, 1375 (Fed. Cir. 2015). “[W]hether an applicant has a bona fide intent to use a mark in commerce is an objective inquiry based on the totality of the circumstances.” *Id.* at 1379. Applicant, as the party raising this affirmative defense of the invalidity of Opposer’s asserted applications, bears the burden of proving the defense. *See, e.g., Bridgestone/Firestone Rsch. Inc. v. Automobile Club de l’Ouest de la France*, 245 F.3d 1359, 1361 (Fed. Cir. 2001); *TPI Holdings, Inc. v. Trailertrader.com, LLC*, Canc. No. 92064976, 2018 WL 1942229, at \*4 (TTAB 2018).

Applicant argues that “Opposer cannot have formed the requisite bona fide intent to use its mark in lawful U.S. commerce because its goods are and always have been unlawful cannabis products.”<sup>21</sup> Applicant asserts that the evidence of record shows that Opposer has only used the mark on cannabis products sold outside the U.S. that are unlawful to sell in the U.S. under the CSA.<sup>22</sup> Applicant further notes that, in

---

<sup>20</sup> Opposer’s alternative basis for its applications, Section 44(d)(2), similarly requires “a bona fide intention to use the mark in commerce.” 15 U.S.C. § 1126(d)(2).

<sup>21</sup> *See* 26 TTABVUE 7.

<sup>22</sup> *See* 19 TTABVUE 108-12 (webpages from Old School Breeder’s Association and Opposer’s webpages offering cannabis seeds for sale); *id.* at 114-15 (Opposer’s Instagram social media

contrast, Opposer points to no documentary evidence or testimony supporting that Opposer, despite identifying plant seeds generally in its identified goods, “has ever intended to use its mark for any non-cannabis plants.”<sup>23</sup>

Opposer’s trial brief does not address this defense. Nor does its rebuttal brief. Indeed, its rebuttal brief does not even deny Applicant’s assertion that Opposer’s current product offerings are unlawful in this country. Instead, it seeks to reassure that it will not ship to countries where its products are unlawful.<sup>24</sup> And our own review of the evidentiary record revealed no evidence or testimony that would support Opposer’s bona fide intent to use its REEFERMAN GENETICS mark on anything other than cannabis products that have been and are currently unlawful to sell in the U.S. under the CSA. *Cf. In re JJ206, LLC*, Ser. No. 86474701, 2016 WL 7010624, at \*2 (TTAB 2016) (it is a legal impossibility to have a bona fide intent to use a mark in commerce in connection with goods that are illegal in U.S. commerce). Opposer does point to its own responses to Applicant’s interrogatories that it is “conducting market research, product development and reviewing all of the relevant and changing U.S. laws and regulations,”<sup>25</sup> but a party’s own interrogatory responses are generally considered weak evidence by themselves. *See, e.g., Daniel J. Quirk, Inc. v. Village Car*

---

account displaying posts promoting cannabis seeds for sale by Opposer); *id.* at 117 (Opposer’s webpage offering an “herb grinder” alternatively described as a “weed grinder”); 20 TTABVUE 363-66 (Opposer’s webpages showing Opposer promoting Cannabidiol (CBD) products derived from cannabis); *id.* at 367-78 (webpages from Old School Breeder’s Association website offering different strains of cannabis seeds developed by Opposer and offered under the REEFERMAN GENETICS mark).

<sup>23</sup> *See* 26 TTABVUE 22.

<sup>24</sup> *See* 27 TTABVUE 6.

<sup>25</sup> *See* 27 TTABVUE 5-6 (citing 20 TTABVUE 352).

Co., Canc. No. 92057667, 2016 WL 6136609, at \*5 (TTAB 2016) (noting that, generally, “at trial a party may not rely on its own answers to an adversary’s interrogatories. Trademark Rule 2.120(j)(5), 37 C.F.R. § 2.120(j)(5) (‘an answer to an interrogatory ... may be submitted and made part of the record only by the receiving or inquiring party.’)) (citing *Beecham Inc. v. Helene Curtis Indus., Inc.*, 1976 WL 20985, at \*1 (TTAB 1976) (ordinarily a party may not rely upon his own answers to his adversary’s interrogatories since said answers would be self-serving in character)); *see also Daniel J. Quirk*, 2016 WL 6136609, at \*6 (“Petitioner’s interrogatory responses are not effective for the purpose of establishing priority.”). In addition, our review of the record reveals no documentary evidence corroborating this conclusory averment.<sup>26</sup>

The same goes for Opposer’s wholesale and retail services: there simply is no evidence that Opposer has ever provided sales services concerning anything other than cannabis and cannabis-related products that have been, and are currently still, unlawful under the CSA. Nor does Opposer provide any evidence that it has ever sold any of the facially lawful goods listed in the goods and services in either application. Moreover, there is no persuasive evidence in the record of this case of any steps taken

---

<sup>26</sup> Although Opposer does not mention it in its rebuttal brief, Opposer’s interrogatory responses also conclusoryly recite that Opposer has sold “hats, t-shirts and herb crushers” to U.S. customers. *See, e.g.*, 20 TTABVUE 351, 352. But here, too, we see no corroborating documentary evidence or testimony elaborating on this averment. While specific and definite **testimony** of a witness about sales or other business activities can be probative on the issue of priority—which here hinges on bona fide intent—such testimony can be undercut where documentary corroboration is lacking. *See, e.g., Tao Licensing, LLC v. Bender Consulting Ltd.*, Canc. No. 92057132, 2017 WL 6336243, at \*9 (TTAB 2017). And we hasten to point out that, here, we do not have specific, definite testimony, only conclusory statements in interrogatory responses.

by Opposer towards fulfilling the alleged bona fide intent to commence such non-cannabis services in the 11 years since the initial application was filed.

Finally, we note that Opposer's initial application has been pending over eleven (11) years, an extraordinarily long time.

When a challenger raises a prima facie case that bona fide intent is lacking, as Applicant has done here, objective evidence of that intent is generally required in response. *See M.Z. Berger*, 787 F.3d at 1379 (requiring "objective" evidence of bona fide intent when challenged). We have previously said that "evidence bearing on bona fide intent is 'objective' in the sense that it is evidence in the form of real life facts and by the actions of the applicant ...." *Rsch. In Motion Ltd. v. NBOR Corp.*, Opp. No. 91179284, 2009 WL 4694941, at \*6 (cleaned up; citation omitted). Here, Opposer has failed to provide the objective, real-life evidence to convince us that it currently has, and had, at any time during the prosecution of the applications, the bona fide intent to offer any of the identified goods and services that are not unlawful under the CSA.

The *M.Z. Berger* Court also stated that, for a party's intent to be bona fide, "the circumstances must indicate that the applicant's intent to use the mark was firm and not merely intent to reserve a right in the mark." 787 F.3d at 1376. We find the evidence in this case, however, indicates **only** Opposer's intent to reserve rights in its mark, so that it would remain at the front of the line to register if the U.S. government ever changes the CSA to permit sales of cannabis and other products that currently are unlawful under the CSA but which, as far as we can tell on this evidentiary record, appear to be the only products Opposer sells.

Because we find that Applicant has proved that Opposer lacks the bona fide intent required to support the applications upon which it based this opposition, those applications are invalid and thus cannot support Opposer's priority in this case. *See Salacuse*, 1997 WL 687374, at \*3. Without priority, Opposer's Section 2(d) claim must fail.

**Decision:** The opposition is dismissed.