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

Taylor

Mailed: September 13, 2006

Opposition No. **91156299**

WARNER BROS. ENTERTAINMENT, INC., substituted for TIME WARNER ENTERTAINMENT COMPANY, L.P.[1]

v.

ROGER CAMPO, JULIO CALDERON and LUZ BEDIALE, d/b/a as LOS PRIMOS PRODUCTIONS

Before Holtzman, Kuhlke and Cataldo, Administrative Trademark Judges.

By the Board:

Roger Campo, Julio Calderon and Luz Bediale ("applicants") seek to register the mark HARRY POTHEAD for "entertainment services in the nature of a live-action, comedy, drama and/or animation television programs, production of live-action comedy, drama and/or animated television programs; a live-action, comedy, drama and/or animated motion picture theatrical films; production of live-action, comedy, drama and/or animated motion picture

[1] Evidence of the relevant assignents is recorded in the Assignment Branch of the Patent and Trademark Office as follows: Warner Communications Inc. by assignent from Time Warner Entertainment Company, L.P., recorded at at Reel/Frame 2641/0774; and Warner Bros. Entertainment, Inc. by assignent from Warner Communications Inc., recorded at Reel/Frame 2641/0774.

theatrical films; and theatrical performances both animated and live-action; and providing information for an actual entertainment via an electronic global computer network in the nature of a live-action, comedy, drama and/or animated television programs; production of live-action comedy, drama and/or animated television programs; a live-action, comedy, drama and/or animated motion picture theatrical films; production of live-action, comedy, drama and/or animated motion picture theatrical films; and theatrical performances both animated and live action; and production of comedic and musical audio recordings."[2] Registration has been opposed by Time Warner Entertainment Company, L.P. ("opposer"). As grounds for opposition, opposer has alleged, *inter alia*, (1) that opposer is the owner of all rights, title and interest in and to the name and mark HARRY POTTER for a wide variety of goods and services including entertainment services and motion picture films; that opposer owns Registration Nos. 2568097, 2568098, 2497083, 2450787, 2493484, 2479341, 2450788, 2525908, 2526111, 2574410, 2530755, 2457302, 2506165, 2506166, 2685932, and 2683060 for HARRY POTTER[3];

[2] Application Serial No. 78054817, filed March 23, 2001 and alleging July 25, 2000 as the date of first use anywhere and in commerce.

[3] Examples of the goods and services recited in these registrations include:

Registration No. 2568097 for "entertainment services in the nature of a live-action, comedy, drama and/or animation television programs, production of live-action comedy, drama

that notwithstanding opposer's prior rights in its mark, applicants filed their application for registration of the

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and/or animated television programs; a live-action, comedy, drama and/or animated motion picture theatrical films; production of live-action, comedy, drama and/or animated motion picture theatrical films; and theatrical performances both animated and live-action; and providing information for an actual entertainment via an electronic global computer network in the nature of a live-action, comedy, drama and/or animated television programs; production of live-action comedy, drama and/or animated television programs; a live-action, comedy, drama and/or animated motion picture theatrical films; production of live-action, comedy, drama and/or animated motion picture theatrical films; and theatrical performances both animated and live action; and production of comedic and musical audio recordings," registered May 7, 2005, and claiming December 22, 2000 as the date of first use anywhere and in commerce;

Registration No. 2568098 for "cookies, bases for making milkshakes, breakfast cereal, bubble gum, cake decorations made of candy, chewing gum, frozen confections, crackers, frozen yogurt, ice cream, pretzels, peanut butter confectionery chips, malt for food; soybean malt; malt biscuits; sugar confectionery; edible decorations for cake; rice cakes; pastilles; pastries; biscuits and bread; coffee beverages with milk; cocoa beverages with milk, chocolate-based beverages, coffee and coffee-based beverages, cocoa and cocoa-based beverages; tea, namely, ginseng tea, black tea, ooiong tea, barley and barley-leaf tea; meat tenderizers for household purposes; binding agents for ice-cream," registered May 7, 2002, and claiming October 11, 2000 as the date of first use anywhere and in commerce; and

Registration No. 2497083 for "toys and sporting goods, including games and playthings - namely, action figures and accessories therefor; plush toys; balloons; bathtub toys; ride-on toys; equipment sold as a unit for playing card games; toy vehicles; dolls; flying discs; electronic hand-held game unit; game equipment sold as a unit for playing a board game, a card game, a manipulative game, a parlor game, a parlor-type computer game, an action type target game; stand alone video output game machines; jigsaw and manipulative puzzles; paper face masks; skateboards; ice skates; water squirting toys; balls - namely, playground balls, soccer balls, baseballs, basketballs; baseball gloves; swimming floats for recreational use; kickboard flotation devices for recreational use; surfboards; swim boards for recreational use; swim fins; toy bakeware and toy cookware; toy banks; and Christmas tree ornaments," registered October 9, 2001, and claiming October 6, 2000 as the date of first use anywhere and in commerce.

mark HARRY POTHEAD for entertainment services; that applicants were aware of opposer's mark and the HARRY POTTER series of books before applicants adopted their "alleged" mark; that applicants' mark is a colorable imitation of opposer's HARRY POTTER mark in that it so closely resembles opposer's mark that use and registration thereof is likely to cause confusion and deception as to the source or origin of applicants' services and will injure and damage opposer and the goodwill and reputation symbolized by opposer's mark; that applicant's services are so closely related to the goods and services of opposer that the public is likely to be confused, to be deceived and to assume erroneously that applicants' services are those of opposer or that applicants are in some way connected with or sponsored by or affiliated with opposer, all to opposer's irreparable damage; and that likelihood of confusion is enhanced by the fame of opposer's mark; (2) that applicants' mark comprises matter that disparages or falsely suggests a connection with opposer; (3)that applicants' mark consists of matter that is scandalous within the meaning of Section 2(a), inasmuch as "pothead" is a pejorative term; (4) that applicants have used their alleged mark only in connection with a single animated motion picture prior to filing their application, thus applicants have not used their mark as a trademark or service mark prior to filing their application and (5) that

opposer's mark has become well known and famous as a distinctive symbol of opposer's goodwill; that opposer's mark became well known and famous before applicant made any use of its alleged mark; and that applicants' mark will cause dilution of the distinctive quality of opposer's mark.

Applicants, in their answer have admitted, among other things, that: (1) opposer's mark is immediately identifiable as a fanciful designation that evokes images associated with the books, the movie and a vast line of Harry Potter products and services originating with opposer or its related companies that have been sold under opposer's mark; (2) applicants were aware of opposer's mark and the Harry Potter series of books before applicants adopted their alleged mark; (3) Harry Potter books are noteworthy for their distinctive and imaginative names, including HARRY POTTER, which are known to millions of readers and others who have merely read book reviews or heard about the Harry Potter stories by word of mouth; (4) opposer's mark has been widely used and extensively publicized in the United States and, therefore, opposer's mark has become well known and famous as a distinctive symbol of opposer's goodwill; (5) opposer's mark became well known and famous before applicant[4] made any use of its alleged mark; (6) applicants'

[4] Opposer, in paragraph 24 of the notice of opposition, references applicants in the singular.

alleged mark will cause dilution of the distinctive quality of opposer's mark; and (7) use and registration of applicants' alleged mark will lessen the capacity of opposer's famous name and mark to identify and distinguish opposer's goods and services. Applicants otherwise deny the salient allegations of the notice of opposition.

Applicants also have asserted that "[a]pplicant's [sic] Mark is a fair-use parody of Opposer's Mark which directly criticizes, comments on and satirizes Opposer's Mark and the content of works associated with Opposer's Mark from which Opposer's Mark is derived, including, but not limited to, content which capitilizes on, bastardizes and haphazardly amalgamates classical 'pop' mythologies and which has little or no social or literary value." Applicants also have asserted that "use of applicant's [sic] mark presents parody, satire and editorial and does a great deal more than propose a commercial transaction."

This case now comes up for consideration of opposer's motion for summary judgment on the grounds that (1) applicants' HARRY POTHEAD mark is likely to cause confusion, mistake, or deception as to source, sponsorship, or affiliation; (2) applicants' mark will dilute the distinctive quality of the HARRY POTTER marks; (3) applicants' mark contains scandalous matter and matter that disparages opposer, the HARRY POTTER marks, and the goodwill

symbolized by the marks; and (4) the application is void ab initio because applicants' have never used HARRY POTHEAD as a mark.

Applicants filed a brief in response to the motion for summary judgment, contending that "[t]he Board has already denied Opposer's motion for summary judgment on valid grounds" and that "Opposer has no justification or valid reason to have its motion reconsidered." Applicants also "vigorously oppose Opposer's untimely and previously denied motion for summary judgment."

Applicants are incorrect in their assertion that the Board had previously denied opposer's motion for summary judgment. On April 5, 2006, the Board issued an order indicating that opposer's motion for summary judgment, filed March 17, 2005, would not be considered because the motion exceeded the page limitation for briefs in support of motions. The Board also noted in footnote two of the order that, as indicated in an order dated June 28, 2005, opposer's March 17 motion for summary judgment was timely filed.

Additionally, opposer's motion, filed April 28, 2006, for summary judgment was timely filed, inasmuch as it was filed prior to the opening of the first testimony period, as originally set or as reset. *See* 37 CFR §2.127(e)(1); and *Blansett Pharmaceutical Co. v. Carmrick Laboratories Inc.*,

25 USPQ2d 1473 (TTAB 1992). Accordingly, applicants' objection to opposer's motion for summary judgment on the grounds that it is untimely is baseless. Notwithstanding that applicants did not respond substantively to opposer's April 28 motion for summary judgment, it is clear that applicants oppose the motion. Accordingly, we will not treat the motion as conceded, but rather consider it on its merits.

As has often been stated, the purpose of summary judgment is one of judicial economy, namely, to save the time and expense of a useless trial where no genuine issue of material fact remains and more evidence than is already available in connection with the motion for summary judgment could not be reasonably expected to change the result. See, e.g., *Pure Gold, Inc. v. Syntex (U.S.A.), Inc*., 739 F.2d 624, 222 USPQ 741, 743 (Fed. Cir. 1984) and *Levi Strauss & Co. v. Genesco, Inc*., 742 F.2d 1401, 222 USPQ 939, 941 (Fed. Cir. 1984). The burden in a motion for summary judgment is on the moving party to establish prima facie that there is no genuine issue of material fact and that it is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c).

Likelihood of Confusion

Considering first opposer's motion on the issue of likelihood of confusion, opposer argues that it is entitled

to summary judgment as a matter of law because the HARRY POTTER marks are famous; the services listed in the application are identical to those in one of opposer's pleaded registrations; the trade channels are similar; the same consumers are targeted; and the parties' respective marks, HARRY POTTER and HARRY POTHEAD, are very similar and create the same commercial impression.

As evidentiary support for its motion, opposer has submitted the declaration, with related exhibits[5], of its Executive Vice President, Diane Nelson. Ms. Nelson states, in relevant part:

> 6. Warner Bros. obtained trademark rights in the names of the characters, places, and things featured in the HARRY POTTER books (the "HARRY POTTER Marks") by assignment from author J.K. Rowling beginning with the first two books on June 1, 1998, and by subsequent assignments with respect to the later books.
>
> 7. After the initial assignment, Warner Bros. began production of the first HARRY POTTER movie, Harry Potter and the Sorcerer's Stone, and executed licensing agreements with the [sic] Mattel, Inc. and other partners to produce various consumer products related to the books and movies. Products bearing the HARRY POTTER Marks – ranging from toys and dolls to books, clothing, costumes, DVDs and videos, backpacks, ornaments, and many others – were first sold at least as early as July 2000.

[5] The exhibits include: (1) documents showing examples of HARRY POTTER products; (2) copies of excerpts from websites where HARRY POTTER products are sold; and copies of opposer's pleaded registrations.

9. Warner Bros. released its series of movies under the HARRY POTTER Marks on the following dates: Harry Potter and the Sorcerer's Stone on November 14, 2001, Harry Potter and the Chamber of Secrets on November 14, 2002, and Harry Potter and the Prisoner of Azkaban on June 4, 2004. The films have been shown in movie theaters throughout the country and together they have grossed over $2.6 billion at the box office. The highly popular series of HARRY POTTER video's, DVDs, and other products featuring the marks have also been widely sold throughout the country and have generated additional hundreds of millions of dollars in sales.

10. The HARRY POTTER Marks are famous by virtue of the enormous popularity of the HARRY POTTER series of books, movies, and related products. They are immediately identifiable as fanciful designations that evoke images associated with the products and services offered by Warner Bros. and its related companies. Thus, the Harry Potter Marks have become well known and famous as indicators of the origin of Warner Bros.' goods and services and a valuable symbol of Warner Bros.' goodwill. The HARRY POTTER books and movies are noteworthy for the distinctive and imaginative names of their characters, including Harry Potter, which are well known to millions of readers and others who have merely read book reviews or heard about the HARRY POTTER stories by word of mouth.

11. Advertisements and other communications promoting the sale of Opposer's HARRY POTTER products have been so extensively broadcast or otherwise disseminated, that virtually everyone residing in the United States has received, has seen, or has been exposed to them. In addition, virtually ever movie theater and video store owner, and virtually every retailer that sells toys and other products of the type offered by

Warner Bros. in the United States has received, used, or seen advertisements and other communications relating to Warner Bros.' Harry Potter products.

13. The HARRY POTTER products have been advertised, displayed, and sold at virtually every retail outlet selling DVDs or videos, at movie theaters in virtually every city in the United States …. HARRY POTTER products have also been sold at all the Warner Bros. store online at www.wbshop.com, and on multiple other sites, including amazon.com and ebay.com…. Warner Bros. has received hundreds of millions of dollars through the sale of videos, DVDs, and other products featuring HARRY POTTER Marks.

14. Warner Bros. owns several federal trademark registrations for its HARRY POTTER Marks, including the following:

HARRY POTTER(Reg. No. 2,568,097; filed December 22, 1999; registered May 7, 2002) for "Entertainment services in the nature of a live-action, comedy, drama and/or animation television programs, production of live-action comedy, drama and/or animated television programs; a live-action, comedy, drama and/or animated motion picture theatrical films; production of live-action, comedy, drama and/or animated motion picture theatrical films; and theatrical performances both animated and live-action; and providing information for an actual entertainment via an electronic global computer network in the nature of a live-action, comedy, drama and/or animated television programs; production of live-action comedy, drama and/or animated television programs; a live-action, comedy, drama and/or animated motion picture theatrical films; production of live-action, comedy, drama and/or animated motion picture theatrical films; and theatrical performances both animated and live action."

> 15. Warner Bros. also owns numerous other federal registrations for its HARRY POTTER Marks including the following: Registration Nos. 2,568,097; 2,568,098; 2497083; 2450787; 2493484; 2479341; 2450788; 2525908; 2526111; 2574410; 2530755; 2457302; 2506165; 2506166; 2685932; and 2683060 …. These registrations are all owned by Warner Bros. and each is current and valid.

Opposer has also submitted the declaration of a senior legal assistant employed by the law firm representing opposer, Jodi Arlen, introducing, in part: (1) copies of excerpts and exhibits from the deposition of applicant Roger Campo; (2) copies of applicants' responses to opposer's first set of interrogatories; and (3) copies of news articles relating to the HARRY POTTER name and mark printed from the Westlaw news data base on March 15, 2005.

In determining the issue of likelihood of confusion[6] and, in this case, whether there is any genuine issue of material fact relating thereto, we take under consideration all of the *du Pont* factors which are relevant under the present circumstances and for which there is evidence of

[6] Priority is not an issue inasmuch as opposer, in connection with its motion for summary judgment, has submitted evidence that Registration Nos. 2568097, 2568098, 2497083, 2450787, 2493484, 2479341, 2450788, 2525908, 2526111, 2574410, 2530755, 2457302, 2506165, 2506166, 2685932, and 2683060 are in existence and are owned by opposer. *See King's Candy Company v. Eunice King's Kitchen, Inc*., 496 F.2d 1400, 182 USPQ 108 (CCPA 1974). Moreover, applicants have admitted that opposer's mark became well-known and famous before applicants made any use of their alleged mark. (See Applicants' Answer at ¶ 29; Notice of Opposition at ¶ 24).

record. *See E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

First considering the fame of opposer's pleaded mark, the evidence of record clearly establishes that opposer's HARRY POTTER mark has acquired renown in connection with, among other things, its entertainment services. Further, as applicant concedes, "opposer's mark has become well known and famous as an indicator of the origin of opposer's goods and services and is a valuable symbol of opposer's good will." (Applicants' Answer at ¶ 8, Notice of Opposition at ¶ 7).

As noted by our principal reviewing court in *Kenner Parker Toys Inc. v. Rose Art Industries Inc.*, 963 F.2d 350, 22 USPQ2d 1453, 1456 (Fed. Cir. 1992), *cert. denied*, 506 U.S. 862, 113 S.Ct. 181 (1992), "the fifth *duPont* factor, fame of the prior mark, plays a dominant role in cases featuring a famous or strong mark. Famous or strong marks enjoy a wide latitude of legal protection." The Federal Circuit reiterated these principles in *Recot Inc. v. M.C. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1897 (Fed. Cir. 2000), stating that "the fifth *DuPont* factor, fame of the prior mark, when present, plays a 'dominant' role in the process of balancing the *DuPont* factors," *citing*, *inter alia*, *Kenner Parker Toys*, 22 USPQ2d at 1456, and reaffirmed that "[f]amous marks thus enjoy a wide latitude of legal

protection." This broader protection is accorded because the marks are more likely to be remembered and associated in the public mind than a weaker mark. *Recot* at 54 USPQ2d 1897. Under this reasoning, opposer's HARRY POTTER mark should be accorded this broader scope of protection.

Considering next the goods and services involved, we note that the services are virtually identical. Specifically, the services set forth in the involved application differ from those set forth in one of opposer's pleaded registrations only by the addition of "production of comedic and musical audio recordings" to applicants' enumerated services. Indeed, even the typographical errors are the same.

Furthermore, there are no restrictions in the services identified in applicants' application or opposer's above-noted registration as to channels of trade. Because there are no such limitations, it must be presumed that the services of each would be offered in all the normal channels of trade for services of this nature and to the normal class of purchasers. *See Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987). Thus, it must be presumed that applicants' services will be provided to the same class of purchasers as opposer's services.

Considering now the similarity or dissimilarity of the respective marks, we note that in cases where the plaintiff's mark is famous and the goods and services are identical, the degree of similarity between the marks necessary to support a finding of likelihood of confusion declines. *See, e.g., Nina Ricci, S.A.R.L. v. E.F.T. Enterprises, Inc.*, 889 F.2d 1070 (Fed. Cir. 1989), 12 USPQ2d 1901 (Fed. Cir. 1989); and *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 877, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992), cert denied, 506 U.S. 1034 (1992).

Herein, we find that, when viewed in their entireties, the parties' respective marks are highly similar in appearance. Not only are the marks both names, but they share a common first name, HARRY, and the first three letters of the two-syllable last names, POT. While there is an obvious difference in connotation between "Potter" and "Pothead," we do not find the distinction sufficient to obviate the strong similarity between the two marks. *See Recot Inc. v. M.C. Becton*, *supra,* (Board must consider the similarity or dissimilarity of the marks in their entireties with respect to appearance, sound and connotation, not simply difference in connotation between FIDO LAY and FRITO-LAY).

In short, every *du Pont* factor that we have considered supports a finding of likelihood of confusion. Moreover,

applicants admit that they were aware of opposer's mark and the HARRY POTTER series of books before they adopted their HARRY POTHEAD mark. (Applicant's Answer at ¶ 11; Notice of Opposition at ¶ 10). As stated by the Court in *Kenner Parker Toys, Inc. v. Rose Art Industries, Inc.*, *supra* at 1456, (citations omitted), "there is no excuse for even approaching the well-known trademark of a competitor…."

We accordingly find that opposer has carried its burden of proof that no genuine issues of material fact remain as to likelihood of confusion and that opposer is entitled to judgment as a matter of law as to that issue.

Applicants have asserted parody as a defense to opposer's claims of likelihood of confusion and dilution (discussed later in this order). However, because we are dealing with opposer's established trademark rights in the trademark HARRY POTTER, any claim applicants may make to the use of their HARRY POTHEAD as a parody will not be considered a "defense" but rather simply as a factor which is relevant to our analysis of likelihood of confusion. *See Elvis Presley Enterprises Inc. v. Capece*, 141 F.3d 188, 46 USPQ 1737 (5th Cir. 1998); *Dr. Seuss Enterprises L.P. v. Penguin Books USA, Inc.*, 109 F.3d 1394, 42 USPQ2d 1184 (9th Cir. 1977).

As stated by the Board in *Columbia Pictures Industries, Inc. v. Miller*, 211 USPQ 816, 820 (TTAB 1981): "The right

of the public to use words in the English language in a humorous and parodic manner does not extend to use of such words as trademarks if such use conflicts with the prior use and/or registration of the substantially same mark by another." *See also*, *Hard Rock Café Licensing Corp. v. Pacific Graphics, Inc*., 776 F.Supp. 1454, 1462, 21 USPQ2d 1368, 1374 (W.D. Wash. 1991) (the claim of parody is no defense "where the purpose of the similarity is to capitalize on a famous mark's popularity for the defendant's own commercial use").

In this case, the record reveals that applicants are not using the HARRY POTHEAD mark in a manner intended to parody opposer's HARRY POTTER mark. As stated in 5 J.T. McCarthy, McCarthy on Trademarks and Unfair Competition, § 31:153 (4th ed. 2001):

> [I]f defendant appropriates a trademarked symbol such as a word or picture, not to parody the product or company symbolized by the trademark, but only as a prominent means to satirize and poke fun at something else in society, this is not "parody" of a trademark.

Particularly, applicants, in their response to the Office Action issued by the Examining Attorney assigned to examine the involved application dated July 27, 2007, state that:

> we have taken only "so much of the original work" (the name Harry) to

> bring to mind the original host work. … Our parody only takes enough of the title to bring to mind the original. Our script and title is completely original with entirely different characters and storyline. It does not parody any material from the Harry Potter movie or book series.

(Campo Dep. at Exhibit 1 submitted as Exhibit 7 to the Arlen declaration).

Applicant, Roger Campo, further states that:

> the joke and the point of our short [Harry Pothead and the Magical Herb] is that the parents become obsessed and delighted with what is being told to them[.] [T]hey may be oblivious to some of the things their children are involved in. … I think one of the ways that we are trying to get humor is by showing that people's obliviousness to what they are involved in could have them involved in something that could potentially be illegal or harmful.

(Campo Dep. 68:15-25; 70:10-14, submitted as Exhibit 7 to the Arlen declaration).

Based on these statements, we can only conclude that applicants are using their HARRY POTHEAD mark to poke fun at something else in society, i.e., applicants' perception that parents are oblivious to what their children are involved in. Thus, applicants have failed to present evidence which supports their claim of parody of opposer's HARRY POTTER mark and we need not, and did not, consider this a relevant factor in our analysis of the issues of likelihood of confusion and dilution.

Dilution

Considering now opposer's claim that applicants' HARRY POTHEAD mark dilutes the distinctive quality of opposer's HARRY POTTER mark, applicants have admitted the elements of dilution. Specifically, applicants admit that: (1) opposer's mark has been widely used and extensively publicized in the United States and, therefore, opposer's mark has become well known and famous as a distinctive symbol of opposer's goodwill; (2) opposer's mark became well known and famous before applicant [sic] made any use of its [sic] alleged mark; (3) applicants' alleged mark will cause dilution of the distinctive quality of opposer's mark; and (4) [u]se and registration of applicants' alleged mark will lessen the capacity of opposer's famous name and mark to identify and distinguish opposer's goods and services. (Applicants' Answer at ¶¶ 27, 29, 30, and 31; Notice of Opposition at ¶¶ 22, 24, 25 and 26). These admissions of fact are conclusive as to the issue of dilution. *See Brown Company v. American Stencil Manufacturing Company, Inc*., 180 USPQ 344, 345 n. 5 (TTAB 1973) (admission during pleading results in estoppel precluding ability to prove anything to the contrary).

We therefore find that no genuine issues of material fact remain as to dilution and that opposer is entitled to judgment as a matter of law as to that claim.

In view of the foregoing, opposer's motion for summary judgment is granted as to the issues of likelihood of confusion and dilution.[7] The opposition is sustained and registration of application Serial No. 78054817 is refused to applicants.

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[7] Consequently, we need not reach the remaining issues of whether applicants' HARRY POTHEAD mark contains scandalous and disparaging matter or whether the involved application is void *ab initio*.