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MARCH 23, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

James W. Ross, Jr.

v.

Analytical Technology, Inc. and
Orion Research, Inc.¹

Opposition No. 101,639
to application Serial No. 74/553,296
filed on July 7, 1994

Michael J. Liston of Carr & Liston for
James W. Ross, Jr.

Ernest V. Linck of Dike Bronstein Roberts & Cushman
for Analytical Technology, Inc. and Orion Research, Inc.

Before Quinn, Hairston and Wendel, Administrative Trademark
Judges.

Opinion by Wendel, Administrative Trademark Judge:

Analytical Technology, Inc. filed an application to
register the mark ROSS for "equipment for electrochemical

¹ In view of the assignment of the involved application to Orion Research, Inc. on March 25, 1996 and the filing of the answer on behalf of both Analytical Technology, Inc. and its successor in interest, Orion Research, Inc. has been joined as a defendant in this opposition. This assignment was recorded by the Assignment Branch of the Office on April 3, 1996.

analysis, namely, electrochemical electrodes for ion detection and measurement, electrical meters responsive to the output of such electrodes, and parts therefor."²

James W. Ross, Jr. filed an opposition to registration of the mark on the grounds that it creates a false suggestion of a connection with opposer under Section 2(a), and that the mark consists of or comprises opposer's name, and thus identifies a living person, without his written consent, under Section 2(c). Opposer states in his brief, however, that he no longer seeks relief under Section 2(a), but rather limits his opposition to Section 2(c).³

In connection with the Section 2(c) claim, opposer alleges that he is a widely known inventor and author in the field of electrochemical analysis; that he was affiliated with applicant's predecessor in interest (also named Orion Research Inc.) for many years as an officer and director; that in May 1981, Orion began marketing devices for electrochemical analysis under the mark ROSS, using opposer's name as a marketing strategy in view of his widely known work in the field; that the mark ROSS points singularly and uniquely to opposer; that he no longer is

² Serial No. 74/553,296, filed July 25, 1994, claiming first use dates of May 1981.

³ Opposer's allegations under Section 43(a) have also not been pursued, and rightly so, since the Board has no jurisdiction over unfair competition claims.

affiliated with Orion or applicant, is not being compensated for use of his name, and has never given his written consent to the use of his name by applicant.

Applicant, in its answer, admits that opposer served as an officer and director of its predecessor, that its predecessor began marketing electrochemical devices under the mark ROSS in 1981, and that opposer is no longer affiliated with applicant. Applicant denies the remaining allegations of the notice of opposition. Applicant raises several affirmative defenses, including laches and acquiescence based on opposer's awareness of use of the mark ROSS since 1981; estoppel based on opposer's failure to raise any claim with respect to the prior registration obtained by applicant's predecessor for the mark ROSS,⁴ which was cancelled because of an inadvertent failure to file a Section 8 affidavit; and laches or acquiescence based on the latter circumstances.

The record consists of the pleadings, the file of the involved application, the testimony depositions taken by opposer of himself and of Robert W. Hagopian, who served both as counsel for and an officer of applicant's predecessor; the exhibits accompanying the depositions; opposer's notice of reliance introducing trademark application file Serial No. 73/435,716 (which issued as

⁴ Reg. No. 1,316,695 for the mark ROSS for the same goods, issued Jan. 29, 1985.

applicant's prior Registration No. 1,316,695), pages 1-27 of the discovery deposition of applicant's successor-in-interest, Orion Research Inc., through its designated keeper of the records, and deposition Exhibits 1, 4, 5 and 6; applicant's notice of reliance introducing the stipulated testimony of three non-party users and purchasers of ROSS electrodes, Daniel G. Brown of Hormel Foods Corporation, Eugene R. Morrissey of Nalco Chemical Company, and Ann Orcutt of Alberto-Culver Company, opposer's responses to certain interrogatories and to applicant's requests for admission, and pages 32-40 and Exhibits 19-27 of the discovery deposition of the keeper of the records for Orion Research Inc. (Trademark Rule 2.120(j)(4)). Both parties have filed briefs, but no oral hearing was requested.⁵

Opposer, testifying in his own behalf, stated that he received his doctorate degree in chemistry, specializing in electrochemistry, from the University of Wisconsin in 1957; that he was on the faculty of MIT for five years; that in 1962 he, together with John Riseman, Alexander Jenkins, and George Eisenman, founded applicant's predecessor, Orion

⁵ Applicant, in its brief, raised objections to both the form of opposer's brief and the manner in which opposer's testimonial depositions were filed, stating simply that they were not in compliance with the governing rules. Since applicant has not more fully stated its objections and since the objections appear to be directed to procedural irregularities which might have been cured if promptly raised, we have given no consideration to the objections. See TBMP § 718.03(c); Trademark Rule 2.123(j).

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Research Incorporated (Orion), and he worked for this company until suffering a debilitating stroke in 1988; that he held various positions at Orion, including corporate director and director of research; that he was principally responsible for the development of the electrodes for electrochemical analysis sold by Orion; that he is the person named on a list of patents showing James W. Ross, Jr. as either sole inventor or coinventor for twenty-eight patents directed to electrodes and/or electrochemical analysis which issued between July 1967 and June 1987 (Exhibit 1); that he is the author or coauthor of a list of twenty-nine articles in the field of electrochemical analysis, these particular publications being dated from 1956 to 1981 (Exhibit 2); that while working at Orion he participated in conferences and seminars, generally speaking on the topic of ion-selective electrodes; that in 1980 or 1981, Orion started selling under the name ROSS a line of electrodes that he had invented; that John Riseman, as president of Orion, made the decision to use ROSS as the name of the electrodes and told opposer that the electrodes would sell if they had his name attached to them because he was "the father of ion-selective electrodes;" that in discussions with Robert Hagopian at that time, opposer Ross was advised that he controlled the use of his name for the products, that it was his "meal ticket"; that he neither

gave his written consent to the use of his name, nor was asked to give such written permission; but that he also never tried to stop Orion from obtaining its original registration for the mark.

Robert W. Hagopian, called under subpoena to testify for opposer, testified that he had been an officer of Orion and had done legal work for the company; that in the annual report for Orion in 1981 advertising material being sent out by the company was included which described the ROSS pH electrodes as being developed by Dr. James W. Ross, Jr., "considered by many to be the father of the ion-selective electrodes" (Exhibit 2); and that Dr. Ross was "clearly a pioneer in ion-selective electrodes and I think that's well known around the world." While initially claiming attorney/client privilege with respect to conversations between opposer and Mr. Hagopian in 1981 with respect to the use of opposer's name, Mr. Hagopain did describe discussions held in 1994 at which counsel for both Orion and Dr. Ross were present. As a result of these discussions, an affidavit was signed by Mr. Hagopian that detailed the events surrounding Orion's adoption of ROSS as a mark for electrodes invented by Dr. Ross. In this affidavit (Exhibit 3), Mr. Hagopian states that in 1980 John Riseman, the president of Orion, selected the name "Ross" for its new pH electrodes because he believed that Dr. Ross's name would be

a selling point for the products; that Orion did not seek or obtain the written consent of Dr. Ross to use his name; that in 1983 Orion applied to register the mark and Dr. Ross was advised by Mr. Hagopian that he could revoke Orion's use of his name at any time and that it was his "meal ticket" if he later left the company; and that Mr. Riseman advised Mr. Hagopian that he had intentionally not obtained Dr. Ross's written consent so that this lack of written consent could be used to foil any hostile takeover of the company.

Mr. Hagopian additionally introduced a copy of the file history of the trademark application filed in 1983 by Orion as owner of the mark ROSS (Exhibit 4), with Dr. Ross's knowledge thereof, and which was executed by Robert Hagopian as a vice president of Orion. The file history shows that registration was originally refused on the grounds that the mark was primarily merely a surname, but this refusal was overcome by the filing of an affidavit under Section 2(f).⁶ In this affidavit, which was executed in 1984 by Susan Lichtenstein, Manager of Market Research and Communications for Orion, Ms. Lichtenstein attested to the facts that the term ROSS was adopted in 1981 to identify an improved series of temperature compensating pH and ion-selective electrodes developed by Dr. James W. Ross, Jr. and that the purchasing public had come to identify the line by the mark ROSS. Ms.

⁶ In the present application, no refusal was ever made on the basis that the mark was primarily merely a surname.

Lichenstein attached to the affidavit examples of promotional literature and trade journal advertising for the ROSS electrodes. In certain of these materials, but not all, reference is made to the fact that the electrodes were developed by Dr. James W. Ross, Jr.⁷

Applicant's evidence consists mainly of the stipulated testimony of three non-parties, namely three present-day purchasers and users of ROSS electrodes. Each of the deponents is employed in a commercial laboratory, Mr. Brown as a Manager of Lab Services, Research and Development at Hormel Foods Corporation; Mr. Morrissey as a Senior Production Chemist at Nalco Chemical Company; and Ms. Orcutt as a Group Leader in the Analytical Laboratory at Alberto-Culver Company. Each deponent testified to his/her knowledge of ROSS electrodes and use thereof for a period of years and to knowledge that the electrodes were made by applicant's successor, Orion. Each denied that the ROSS trademark brought to mind a particular person or that the electrodes were purchased because of any such connection, as well as any knowledge of Dr. Ross prior to this opposition.⁸

⁷ Despite these references to Dr. Ross in the Section 2(f) affidavit, the Office never raised the issue of written consent.

⁸ The following responses were given by the three deponents to the identical questions:

Q. How did you acquire knowledge of ROSS electrodes?

A. (Mr. Brown) They have been used in our labs for several

Section 2(c) of the Trademark Act, 15 USC 1052(c), prohibits registration of a mark that

consists of or comprises a name, portrait, or signature identifying a particular living individual except by his written consent... .

In the present case, opposer maintains that the mark ROSS as sought to be registered for electrochemical analytical equipment specifically identifies himself, Dr. James W. Ross, Jr.; that he was the inventor of the products; and that the products were named for him and promoted in such a manner. Even though only opposer's surname has been adopted as a mark, opposer argues that it is not necessary that a person's full name be used, so long as it is a "name" that identifies a particular living person, citing *In re Sauer*, 27 USPQ2d 1073 (TTAB 1993),

years.

A. (Mr. Morrissey) As I recall, I first learned of ROSS electrodes at a conference (PITTCON) in 1995.

A. (Ms. Orcutt) My staff and I have been purchasing and using ROSS electrodes for several years. I don't recall how or when I first became aware of ROSS electrodes.

Q. Do you have any knowledge about a person named James W. Ross, Jr.?

A. (Mr. Brown) Yes. His name was mentioned when I was contacted by Adrian Vasquez of Orion regarding this trademark opposition.... .

A. (Mr. Morrissey) I had no knowledge until I was contacted about giving testimony in these proceedings.

A. (Ms. Orcutt) Yes. When I was contacted about giving testimony, I was informed by Orion that James W. Ross, Jr. was opposing the registration of the ROSS trademark. I was also told that James W. Ross, Jr. was the inventor of the ROSS electrode and that the electrodes were named ROSS in his honor. Prior to this discussion I did not know this.

aff'd, 26 F.3d 140 (Fed. Cir. 1994)[Section 2(c) held to bar registration of marks containing not only full names, but also surnames, nicknames, etc.].

Opposer acknowledges that the test generally applied to determine whether a name serves to "identify" a particular living individual is whether either the person is so well known that the public would assume a connection or there will be an association of the name and the mark as used on the goods because the individual is publicly connected with the field in which the mark is being used. See *In re Sauer*, 27 USPQ2d at 1075, and the authorities cited therein.

Opposer agrees that if this test, without any qualifications, were applied here, the stipulated testimony presented by applicant might serve to indicate the absence of any public association of the ROSS electrodes with opposer. But opposer contends that a distinction must be drawn between a situation in which the proposed mark only by coincidence consists of a living individual's name and, thus, there is no public association of the two, and a situation such as here when the proposed mark was intended to and does identify a particular individual. Opposer argues that the fact that some present-day purchasers do not associate the named individual with the product should not be controlling, in the face of evidence that Dr. Ross was associated with applicant's predecessor, that he invented

the electrodes which were named for him, and that this association of name and goods was promoted by applicant's predecessor.⁹ Opposer likens the circumstances here to those in *Reed v. Bakers Engineering & Equipment Co.*, 100 USPQ 196 (Exam'r in Chief 1954), and contends that here also it should be found that the defending party has failed to carry its burden of proof that the name being used as a mark "does not refer to and identify" the plaintiff.

Applicant, in response, argues that it is opposer who has failed to meet his burden of proof, in that he has not shown the required association by the present-day purchasing public of the mark ROSS, as used on the goods recited in the application, with himself, Dr. James W. Ross, Jr. Applicant insists that it has demonstrated that the purchasing public of the 1990's does not identify the ROSS mark as referring to opposer and that opposer has submitted no evidence to the contrary.¹⁰ Applicant acknowledges that evidence has been produced that applicant's predecessor included references to the inventor of the ROSS electrodes in advertising in 1981 and 1982, but notes that no evidence has been produced of

⁹ By opposer's notice of reliance upon portions of the discovery deposition taken of applicant's successor-in-interest through its keeper of the records, copies of advertising from 1981 and 1982 which referred to Dr. Ross in connection with the ROSS electrodes have been made of record.

¹⁰ Applicant specifically notes that opposer failed to take any action during his rebuttal testimony period.

any references to Dr. Ross in advertising since that time.¹¹ Applicant maintains that any potential connection between the ROSS electrode and opposer's name could only have been made over fifteen years ago and since that time any such association has been lost in view of the inactivity of Dr. Ross in the field since at least 1988.¹² In applicant's view, opposer cannot rely upon any past "fame" as evidence of a public association in the 1990's of his name with the ROSS electrodes. Applicant argues that the Reed case cited by opposer actually supports applicant's position, in that applicant has produced witnesses to show that the mark ROSS as used in connection with the goods does not "refer to and identify" Dr. Ross in the relevant trade.

Applicant also raises the argument that opposer has waived all rights with respect to use of his name, in view of his failure to raise any opposition to the filing of the original application or to the use and registration of his name at that time, but instead gave his oral consent thereto. While acknowledging that in the Reed case, the

¹¹ In its notice of reliance, applicant has introduced exhibits from opposer's discovery deposition of applicant's successor-in-interest through its keeper of the records which consists of catalogs from the years 1983, 1984, 1987, 1988, 1989, 1991, and 1995-96. While all include the ROSS electrodes, no reference is made in any one to Dr. Ross.

¹² Applicant has made of record opposer's responses to requests for admission evidencing the inactivity of Dr. Ross in the field even since 1985, at least to the best of his recollection.

statement was made that "laches, acquiescence and estoppel have nothing to do with Section 2(c) of the Trademark Act, which contains an absolute requirement for registration," *supra* at 199, applicant contends that under the particular circumstances involved here, opposer should be estopped from claiming any benefit of Section 2(c). Opposer, in reply to applicant's contentions, maintains that any reliance upon the defenses of laches, acquiescence and estoppel is clearly contrary to precedent and also that the defenses are irrelevant, inasmuch as opposer is challenging the present application, not the prior registration.

It is clear that the provisions of Section 2(c) are applicable to a "name...identifying a particular living individual," be it a full name, a nickname or a surname, so long as the name points to a particular living person. See *In re Sauer, supra*, and the cases cited therein. Thus, the mark ROSS, although only the surname of opposer, would fall within the provisions of Section 2(c), *if* opposer has established that this "name", as used on the goods recited in the application, points uniquely to him as a "particular living individual."

In *Martin v. Carter Hawley Hale Stores, Inc.*, 206 USPQ 931 (TTAB 1979), the Board set forth the following factors to be considered in determining whether a particular living

person bearing the "name" would be associated with the mark as being used on the goods:

- 1) if the person is so well known that the public would reasonably assume the connection, or
- 2) if the individual is publicly connected with the business in which the mark is being used.

Id. at 933. See also *In re Sauer*, *supra* at 1075; 2 J. McCarthy, *McCarthy on Trademarks and Unfair Competition*, § 13:37 (4th ed. 1996).

In the Martin case, the name of the opposer Neil Martin was found not to fall within the provisions of Section 2(c), when consideration was given to these factors. While registration was being sought for the mark NEIL MARTIN (for men's shirts), opposer, although well known in his own professional and social circles, had failed to establish either that he was so famous as to be recognized by the public at large or that "he is or ever was publicly connected or associated with the clothing field." Id. at 933. As a result there was no potential for damage to opposer by the use of the mark NEIL MARTIN and, therefore, there was no requirement of written consent under Section 2(c). By contrast, in the Sauer case, the evidence was found sufficient to establish that Section 2(c) was applicable. There the mark BO BALL was being used on an oblong shaped ball made of white leather with red stitching. The Board found the name BO to be the recognized nickname of

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Bo Jackson (a star in both professional football and baseball), and that he was so well known by the public in general that use of the name BO in connection with a sports ball would lead to the assumption that he was in some way associated with the goods.

In the present case, the record fails to show that opposer was so well-known by the public in general that the mark ROSS would automatically lead to an assumption on the part of the public that the mark referred to Dr. James W. Ross, Jr. and that he was associated with the electrodes on which the mark ROSS is being used. Thus, the question to be considered is whether opposer has established that he is publicly connected, or that there is a public association of him, with the electrochemical analysis equipment field in which the mark ROSS is being used, so that use of the mark would point to him.

We believe that opposer has adequately demonstrated that he was well known in the field of electrochemical analysis as an inventor in the period ranging from the late 1960's to 1985. Opposer has also shown that the predecessor company of which opposer was a founder (Orion) decided to take advantage of opposer's recognition in the field and, thus, John Riseman, as president of Orion, decided in 1980 to adopt the name "Ross" as a mark for the line of electrodes which opposer had developed. Opposer has shown

that specific references were made to him, as "the father of ion-selective electrodes," in connection with the advertising and promotion of the ROSS electrodes in 1981 and 1982, which further reinforced the public association of the ROSS electrodes with Dr. Ross. Although a trademark application was filed for the mark in 1983 by Orion, opposer has shown that he never gave his written consent to the use of his name. Instead, he was given to understand that, although at that point his consent was not being requested in writing, but rather only orally, he would retain the right to object to use of his name without his written consent, if the company later fell into different hands.

Thus, the issue narrows down to whether a public association of opposer with the field of electrochemical analysis equipment remains, so that he may invoke the provisions of Section 2(c) in opposition to registration of the mark ROSS, as sought in the present application.

To aid in our decision we turn to the Reed case, which has been relied upon by both parties, but given different interpretations. In Reed, the name of Paul Reed, the engineer who had designed and built the baker's ovens being sold as REED REEL OVENS, was intentionally adopted for use in connection with the goods. From 1932 until 1942 Reed was active in the partnership selling these ovens, but in 1942 he was called into military service, and on his return in

1945, he became dissatisfied with the company and left to become part of another company which began the manufacture of ovens under the name Reed in 1948. The original partnership filed an application for registration of the mark REED REEL OVENS in 1948, a registration issued in 1950, and James Reed filed a petition in 1951 to cancel the registration on the basis that the registration was obtained without his written consent, as required by Section 2(c).

In reviewing the evidence, the Examiner in Chief¹³ determined that the name REED had clearly been selected because of its reference to Paul Reed and that the name as used on the ovens identified Paul Reed within the registrant's organization. He then went on to state:

It seems to me that "Reed" on the ovens also identified petitioner to the customers at least during the first several years of the business in view of the personal contact of the petitioner with the customers in installing and servicing the ovens. Under these circumstances, it seems to me that the burden of proof is upon the respondent to show that Reed does not refer to and identify the petitioner. ... and respondent produced no witnesses to show that the name Reed appearing in "Reed Reel Ovens" does not refer to and identify the petitioner in the particular trade. *Supra* at 199-200.

Here also the name ROSS was intentionally selected by Orion to be used as a mark for the electrodes because of opposer's development of the product and this association was fully recognized and acknowledged by the company. Here

¹³ In 1954 the Trademark Trial and Appeal Board had not yet been formed and cases involving petitions to cancel were adjudicated by the Patent Office Examiner in Chief.

also the particular person identified by the mark later became inactive in that company, although here he further became inactive in the entire field. Applicant argues, however, that the similarities end when we come to the question of whether the name ROSS refers to and identifies opposer in the relevant trade. While no evidence to the contrary was produced in Reed, applicant maintains that it has demonstrated that present-day purchasers and users of the ROSS electrodes do not make this association between opposer's name and the mark.

It is well established that the question of registrability must be decided on the basis of the factual situation as of the time registration is sought. See *Remington Products Inc. v. North American Philips Corp.*, 892 F.2d 1576, 13 USPQ2d 1444 (Fed. Cir. 1990); *In re Thunderbird Products Corp.*, 406 F.2d 1389, 160 USPQ 730 (CCPA 1969); *DeWalt, Inc. v. Magna Power Tool Corp.*, 289 F.2d 656, 129 USPQ 275 (CCPA 1961). Here applicant has shown that certain present-day purchasers and users (three in number) do not personally make any association between inventor and mark. Opposer has filed no rebuttal evidence specifically demonstrating a present-day association of Dr. Ross with the mark ROSS, when used on electrodes which had been developed by him by the early 1980's.

Nonetheless, we consider this an insufficient basis for concluding that the mark ROSS does not continue to identify a particular living individual, namely, the inventor Dr. Ross, in the relevant trade. In the first place, we find the testimony taken by applicant in 1997 of three persons working in commercial laboratories to be of limited probative value, even as to a present-day association. Applicant has provided no information with respect to the exact period or extent of work by any of the deponents in the relevant field, or their level of training or expertise in electrochemical analysis. Thus, we cannot determine whether their responses are truly representative of persons presently active in the field. Furthermore, even if persons who have only worked in the field since the 1990's are unfamiliar with Dr. Ross, we find this insufficient to rebut the prima facie case made by opposer of his general reputation in the field of electrochemical analysis, and particularly, in connection with ion-selective electrodes. While opposer's activities may have extended to no later than the early 1980's, we cannot presume, on the basis of the testimony of three persons, that his name would no longer be recognized by more than an insignificant number of persons presently active in the field.¹⁴ Instead, we are

¹⁴ In *University of Notre Dame du Lac v. J.C. Food Imports*, 793 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), Judge Nies expressed the view that both Sections 2(a) and 2(c) appeared to have been intended by the framers of the Lanham Act to embrace the

convinced that a substantial number of purchasers or users of the ROSS electrodes would recognize that the mark ROSS refers to and identifies Dr. Ross, as the inventor of these electrodes. Accordingly, under Section 2(c), he has a right to oppose registration of his name without his written consent.

Looking to applicant's arguments with respect to opposer's waiver of his rights under Section 2(c), we do not consider ourselves bound by the statement in Reed that the defenses of laches, acquiescence and estoppel are not applicable in the face of the statutory bar raised by Section 2(c). In view of the personal nature of opposer's claim, we see no overriding public policy or interest which

concepts of the right of privacy, or the related right of publicity. J. McCarthy has stated that, in his opinion, Section 2(c) is the provision which is the closest approximation to the right of publicity. 2 J. McCarthy, *supra* at § 13:39.

In reviewing the legislative history of the Act ourselves, we find that the discussions of Section 2(c), although sparse, centered around the concern that the word "name" in Section 2(c) must be understood as referring to a particular individual. Furthermore, we cannot help but note that although the phrase "name...of a living individual" was the language initially suggested for Section 2(c), the final provision contains the much more specific language, "name...identifying a particular living individual."

If Section 2(c) is viewed as an embodiment of at least the concept of the right of publicity, it must be construed as a protection of the right of a person to control the commercial use of his or her identity. Infringement of the right of publicity per se is governed by the test of "identifiability", i.e., if more than an insignificant number of people identify the object person from the unpermitted commercial use. 4 J. McCarthy, *McCarthy on Trademarks and Unfair Competition*, §§ 28:1 and 28:12 (4th ed. 1996). Thus, it seems appropriate that Section 2(c) would be governed by a similar test of identification.

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would preclude the assertion of equitable defenses against this Section 2(c) claim. Cf. *Treadwell's Drifters Inc. v. Marshak*, 18 USPQ2d 1318 (TTAB 1990) [equitable defenses found to be available since claim of false suggestion under Section 2(a) is personal in nature]; *Harjo v. Pro Football Inc.*, 30 USPQ2d 1828 (TTAB 1994) [equitable defenses found not to be available since claim under Section 2(a) that marks are scandalous and/or disparaging involves overriding public policy interests]. We do believe, however, that applicant has no right to raise an equitable defense such as estoppel under the present circumstances. Opposer has clearly shown that there was a deliberate decision on the part of applicant's predecessor not to obtain opposer's written consent and to preserve opposer's right to later raise the issue of written consent, in the event of an attempted hostile takeover of the company. The Office never raised the question of written consent in the first application, as would have required opposer to either come forth with his written consent, or refuse the same, at that point in time. The fact that opposer has now raised the issue against applicant does not turn the equities in applicant's favor.

In summary, opposer has established that applicant is seeking registration of a mark which consists of the name of a particular living individual, namely, Dr. James W. Ross,

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Jr., without his written consent, and, thus, registration of the mark must be denied.

Decision: The opposition is sustained.

T. J. Quinn

P. T. Hairston

H. R. Wendel
Trademark Administrative Judges,
Trademark Trial and Appeal Board