

Trademark Trial and Appeal Board Finds Reckless Disregard for the Truth Equals Fraud, Cancels Trademark Registration

October 14, 2021

By Laura J. Winston

The U.S. trademark law provides that a trademark registration may be canceled if it was obtained fraudulently. A registration may also be canceled if the registrant commits fraud in post-registration filings, including a Section 15 Declaration of Incontestability.

Often filed in combination with the Section 8 Declaration of Use due in the 6th year of a registration, the Section 15 Declaration of Incontestability may be filed if the registrant has been using a registered mark continuously for the previous five years. However, certain other conditions are met, including that there are no pending proceedings, such as a lawsuit in federal court or a cancellation action before the US Patent and Trademark Office (USPTO) or Trademark Trial and Appeal Board (TTAB).

This was the issue in *Chutter, Inc. v. Great Management Group, LLC* and *Chutter, Inc. v. Great Concepts, LLC*, 2021 USPQ2d 1001 (TTAB 2021). In 2010, when Great Concepts was submitting a combined Section 8 and 15 Declaration of Use and Incontestability for its trademark DANTANNA'S, the attorney for Great Concepts signed the declaration. He was aware that there were pending proceedings involving the trademark registration but, he later admitted, he did not read the declaration before signing it, and he was not familiar with the requirements of the Section 15 declaration. Years later, Chutter, Inc. filed a cancellation action against the registration, claiming that the Section 15 Declaration was fraudulently filed.

In its decision, the TTAB noted that fraud requires an intent to deceive; false statements made with a reasonable and honest belief that they are true do not result in a finding of fraud. The TTAB went on to find that the attorney who signed the declaration acted with reckless disregard and held that this reckless disregard rises to the level of intent to deceive needed to find fraud. Moreover, although the trademark law allows for the opportunity in certain circumstances to correct misstatements once they are discovered, the attorney who signed the declaration did not take any corrective steps once he discovered that he had made false statements in the declaration. "By failing to ascertain and understand the import of the document he was signing, far from conscientiously fulfilling his duties as counsel, [the attorney] acted in reckless disregard for the truth; nor did he take any action to remedy the error once it was brought to his attention."

Stating that the attorney's reckless disregard was "the legal equivalent of finding that Defendant Great Concepts had specific intent to deceive the USPTO", the TTAB granted the petition to cancel the DANTANNA'S registration.

Why does this decision matter to trademark owners? It's a reminder to review carefully the statements in the documents you are signing and to ask questions if you do not understand something and speak up if something does not sound right. Although there is generally a high bar to a finding of fraud leading to the cancellation of a trademark registration, this case shows that a lack of attention to reviewing and understanding the statements being made in trademark declarations can

constitute “willful blindness” that rises to the level of reckless disregard and cancellation of one’s trademark registration could be the result.