



What is a Trademark Opposition?

by Bruce Margulies

Any person who believes that he or she would be damaged by the registration of a mark upon the principal register may file a notice of opposition, which initiates a “trademark opposition”. A trademark opposition is litigation comprising a third-party challenge to a trademark application. Procedurally, the opposed trademark has been examined and allowed by the United States Patent and Trademark Office (USPTO). One of the last steps before a trademark registers is that it is published for opposition.

Prior to publication, the examiner will have searched for marks that may be likely to be confused with the examined mark. However, the examiner is limited in time and resources, and the determination of likelihood of confusion has a subjective component. Therefore, the USPTO allows third parties to police the allowed marks with respect to their own marks, particularly regarding issues such as alleged infringement, likelihood of confusion, and trademark dilution.

Once an opposition has been

initiated, the trademark application is suspended and the USPTO Trademark Trial and Appeal Board (TTAB) maintains jurisdiction over the opposition. A TTAB interlocutory attorney manages the pretrial proceedings, wherein filings are generally submitted to the TTAB online. Following periods to address potential settlement, discovery of evidence and clarification of issues, and submission of evidence, trial briefs are filed with a three-judge panel of the TTAB, which will decide the merits of the opposition. If the opposing party prevails, then the trademark application is abandoned.

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