

Rapunzel, Rapunzel Let Down Your Hair for Consumer Oppositions

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In the magical land of the U.S. Patent and Trademark Office, a new chapter has been added to the trademark fairytale: consumers may have a real interest in preventing the exclusive appropriation of merely descriptive or generic terms by trademark owners.

The Trademark Trial and Appeal Board recently ruled that Suffolk University Law Professor Rebecca Curtin, as a consumer who asserted that she “participates amongst other consumers in the marketplace for dolls and toy figures of fairytale characters, including Rapunzel”, has standing to oppose an application for “Rapunzel” for dolls and toy figures. The Board rejected the applicant’s argument that only competitors have standing to oppose an application. The Board determined that “[c]onsumers, like

competitors, may have a real interest in keeping merely descriptive or generic words in the public domain, to prevent the owner of a mark from inhibiting competition in the sale of particular goods and to maintain freedom of the public to use the language involved.” This decision has less to do with Curtin’s commercial interests, but is anchored in the principle that an applied-for mark that is merely descriptive of or generic for a class of goods or services cannot be protected as a trademark, and may cause damage to consumers (not just competitors) who are prospective purchasers of goods bearing a descriptive or generic mark.

In an attempt to convince the TTAB that Curtin lacked a “real interest” or a personal



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stake in the outcome of its registration, applicant United Trademark Holdings argued that Curtin needed to have a specific interest in using the term “Rapunzel” in her “business” or in any fashion beyond her mere status as a consumer of Rapunzel brand dolls. But the Board determined that this is too narrow an interpretation of the issue of standing. An opposer is “not required to allege that she is a competitor” to support her claims that the applied-for mark fails to function as a trademark because it is descriptive or generic.

To initiate an opposition or cancellation proceeding before the Board, an opposer must show that she has a “real interest” in the registration of the mark, and a “reasonable basis” to believe she would be damaged by the grant of a trademark registration. Curtin’s “real interest” in the registration of “Rapunzel” is as a consumer of dolls and toy figures of fairytale characters that she has purchased and will continue to purchase. Her “reasonable basis” to oppose this application, the board determined, is because registration would “constrain the marketplace of such goods sold under the name ‘Rapunzel,’ raise prices of ‘Rapunzel’ dolls and toy figures, and deny consumers [] the ability to purchase ‘Rapunzel’ dolls offered by other manufacturers.”

Though the TTAB, protector of the trademark realm, has merely refused to dismiss Curtin’s case, this case presents an interesting point: will extending standing to include any consumers open the floodgates for intermeddlers to oppose and petition to cancel any and all marks, adding to the Board’s docket and jeopardizing applicants and trademark holders? A reasonable guess is that this concern will not come to pass. The Board did not do away with the safeguards of having a “real interest,” a reasonable basis for damage, and a viable claim as to why a mark is not entitled to registration. Mere consumers will likely not get far in TTAB proceedings without articulating a sound basis for questioning a mark that is fanciful just because it will prevent her from using the term in other ways.

The Board did dismiss Curtin’s claim that the mark was “functional” as inapplicable to the Rapunzel word mark. We will keep our eye on this dispute to see whether Curtin can get her happily ever after based on the surviving claims.