

This Opinion Is Not a
Precedent of the TTAB

Mailed: July 31, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

The Ida B. Wells Memorial Foundation
v.
Delmarie L. Cobb dba The Ida B. Wells Legacy

Opposition No. 91255089 (parent)
Cancellation No. 92074729

Jeffrey T. Norberg and Rochelle Claerbaut, of Neal & McDevitt, LLC, for The Ida B. Wells Memorial Foundation.

Lee Pulliam, of Lee Pulliam and Associates, for Delmarie L. Cobb dba The Ida B. Wells Legacy.

Before Greenbaum, Thurmon and Elgin, Administrative Trademark Judges.

Opinion by Thurmon, Administrative Trademark Judge:

Introduction

This case involves a dispute between two nonprofit organizations that exist, to some extent, to honor Ida B. Wells, a journalist and sociologist of the late 19th and early 20th centuries who, among other accomplishments, co-founded of the National Association of Colored Women and the National Association for the Advancement of

Colored People (NAACP).¹ The Plaintiff is The Ida B. Wells Memorial Foundation (“Plaintiff”), a nonprofit organization formed by descendants of Ms. Wells in 1988.² Plaintiff filed an application to register the mark IDA B. WELLS, in standard characters, on October 10, 2019.³ In early 2020, the Trademark Examining Attorney issued an Office Action that noted the existence of an earlier-filed application for the mark THE IDA B. WELLS LEGACY COMMITTEE (in standard characters) that, if registered, may be a basis for a Section 2(d) refusal.⁴ Plaintiff’s application was suspended pending the outcome of the earlier-filed application.⁵ The cited application was filed by Delmarie L. Cobb dba The Ida B. Wells Legacy, the Defendant in these proceedings.⁶

¹ 83 TTABVUE 14-15 (Plaintiff’s Trial Brief); 85 TTABVUE 24-25 (Defendant’s Trial Brief). When we cite to the record, we refer to TTABVUE, the Board’s docketing system, by docket entry and page number of the downloaded document (e.g., 18 TTABVUE 2). When we cite to records from the prosecution of the applications involved in this proceeding, we refer to the records as they appear in the TSDR system, with page references to downloaded pdf versions of such records.

² 83 TTABVUE 13.

³ Application Serial No. 88649708 was filed on October 10, 2019, based on alleged use and use in commerce at least as early as October 1, 1988, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a). The application identifies the following services in International Class 36: “Charitable foundation services, namely, providing awards in the nature of financial assistance and support for programs and services of others and educational scholarships.”

⁴ Office Action dated January 21, 2010 at 1.

⁵ Suspension Letter dated February 25, 2023.

⁶ Application Serial No. 88411415 was filed on May 1, 2019, based on alleged use and use in commerce at least as early as March 6, 2017, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a). The mark consists of standard characters and the word “COMMITTEE” is disclaimed. The application identifies the following services: “Political action committee services, namely, promoting the interests of African American Women in the field of Politics; Business services, namely, developing fundraising campaigns for others.”

Although the Trademark Examining Attorney cited to the application just identified, Defendant had two applications pending when Plaintiff filed its application in October, 2019. Defendant's second application was for the mark IDA'S LEGACY, in standard characters.⁷ This application matured to registration.⁸

Plaintiff first brought an opposition action against Defendant's application for the mark THE IDA B. WELLS LEGACY COMMITTEE, the mark cited by the Trademark Examining Attorney as a possible basis for refusing registration of Plaintiff's IDA B. WELLS mark.⁹ A few months later, Plaintiff filed a petition to cancel Defendant's registration for the IDA'S LEGACY mark.¹⁰ The two proceedings were consolidated, with the opposition being the parent proceeding.¹¹ The operative Notice of Opposition and Petition for Cancellation allege the same three claims for relief: 1) Defendant's marks create a false association with Plaintiff, under Section 2(a); 2) Plaintiff has prior trademark rights and Defendant's use of its mark will create a likelihood of

⁷ Application Serial No. 88411549 was filed on May 1, 2019, based on alleged use and use in commerce at least as early as March 6, 2017, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a). The application identifies the following services in International Class 35: "Political action committee services, namely, promoting the interests of African American Women in the field of Politics; Business services, namely, developing fundraising campaigns for others."

⁸ Registration No. 6005590.

⁹ 1 TTABVue (Opposition 91255089).

¹⁰ 1 TTABVue (Cancellation 92074729).

¹¹ 7 TTABVue (Opposition 91255089); 4 TTABVue (Cancellation 92074729). The opposition proceeding is the parent case, so we will cite to the Opposition record from this point forward. If we cite to the cancellation proceeding, we will expressly note that.

confusion, under Section 2(d), and 3) Defendant was not the owner of the marks when the applications were filed.¹²

Defendant denied the salient allegations of the amended Notice and Petition, and presented a number of “defenses,” none of which were pursued at trial, and therefore are waived or forfeited.¹³ *In re Google Tech. Holdings LLC*, 980 F.3d 858, 862-63 (Fed. Cir. 2020) (holding that arguments not presented to the Patent Trial and Appeal Board were forfeited, while noting that the loss of such rights has been identified as “waiver” in prior decisions); *see also Peterson v. Awshucks SC, LLC*, Can. No. 92066957, 2020 TTAB LEXIS 520, *2-3 at n.3 (party “did not present any evidence or argument with respect to these asserted defenses at trial, so they are deemed waived”).

The consolidated proceedings have been briefed and the case is ready for decision. Plaintiff has carried its burden of proving its ownership claim, for reasons given below. Because this claim fully resolves the dispute, we do not reach Plaintiff’s other two claims. *Multisorb Techs., Inc. v. Pactiv Corp.*, Can. No. 92054730, 2013 TTAB LEXIS 616, at *3 (TTAB 2013) (“[T]he Board has generally used its discretion to decide only those claims necessary to enter judgment and dispose of the case.”).

I. The Record

The record consists of the pleadings, the prosecution file for the opposed application and the file of the registration subject to the petition for cancellation,

¹² 38 TTABVUE.

¹³ Some of the matters raised were not defenses, but merely challenges to Plaintiff’s claims.

pursuant to Trademark Rule 2.122(b)(1), 37 C.F.R. § 2.122(b)(1). In addition, each party submitted evidence. We will not identify the full record here, because the issue we decide is a narrow one and much of the record evidence is potentially probative only to Plaintiff's other two claims. The evidence we rely on to resolve the ownership issue comes primarily from the deposition of Delmarie Cobb¹⁴ and a record from the Illinois Secretary of State.¹⁵

The rest of the record is messy, particularly Defendant's submissions. Defendant filed a Notice of Reliance that referenced testimony from Defendant Delmarie Cobb and from two of the principals of Plaintiff, Michelle Duster and Daniel Duster.¹⁶ Defendant then filed an incoherent mix of materials that are neither testimony nor publicly available documents. This mix appears to include deposition testimony of the three individuals identified above and a variety of other filings Defendant submitted earlier in the proceeding.¹⁷ Plaintiff moved to strike. Defendant did not respond, and the Board granted Plaintiff's motion as conceded.¹⁸

But Plaintiff had previously asked the Board to reopen its trial period.¹⁹ That request was granted after Defendant made the filings described above, thus giving

¹⁴ 55 TTABVUE (testimony) (the deposition was submitted under a Notice of Reliance that was filed separately as 46 TTABVUE); 56 TTABVUE (exhibits to deposition).

¹⁵ 75 TTABVUE.

¹⁶ 59 TTABVUE 2.

¹⁷ 61-67 TTABVUE.

¹⁸ 70 TTABVUE 2.

¹⁹ 58 TTABVUE.

Defendant a new period to submit evidence.²⁰ Defendant appears to have largely resubmitted the same materials Plaintiff had moved to strike, but this time with a bit more explanation in some of the filings.²¹ Plaintiff did not move to strike and did not object in its Trial Brief to these later filings, so all of Defendant later-filed “evidence” is of record.

While we rely on only a relatively small part of the evidence of record to resolve the ownership issue, we have carefully reviewed the entire record. Much of the “evidence” Defendant submitted is not really evidence and other parts of it are duplicative (Plaintiff submitted the Cobb deposition transcript and then Defendant filed the same transcript, or excerpts from it, twice).²² Despite the messy nature of the record before us, the evidence on the ownership issue is clear, as we explain below.

II. Entitlement to a Statutory Cause of Action

Entitlement to a statutory cause of action must be established in every inter partes case. *Australian Therapeutic Supplies Pty. Ltd. v. Naked TM, LLC*, 965 F.3d 1370, 1373 (Fed. Cir. 2020) (citing *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 125-26 n.4 (2014)). A party in the position of plaintiff may oppose, or seek cancellation of, the registration of a mark when such proceedings are within the zone of interests protected by the statute and the plaintiff has a reasonable belief

²⁰ 67 TTABVUE.

²¹ 71-79 TTABVUE.

²² 55 TTABVUE (Cobb deposition transcript filed by Plaintiff); 60 TTABVUE (excerpts from Cobb deposition transcript filed by Defendant); 72 TTABVUE (Cobb deposition transcript filed by Defendant).

in damage that is proximately caused by registration of the mark. *Corcamore, LLC v. SFM, LLC*, 978 F.3d 1298, 1303 (Fed. Cir. 2020).

Plaintiff has established its entitlement to bring the opposition and cancellation cases before us. The opposition challenges Defendant's application to register the mark IDA B. WELLS LEGACY COMMITTEE, the application that was cited as a potential basis for refusing registration of Plaintiff's IDA B. WELLS mark. The cancellation challenges Defendant's registration of the mark IDA'S LEGACY. There is sufficient evidence to make plausible Plaintiff's claims of common law priority and likelihood of confusion against each of Defendant's marks under Section 2(d) of the Act. Plaintiff, therefore, is entitled to bring both the opposition and cancellation cases. *See Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1377 (Fed. Cir. 2012); *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 945 (Fed. Cir. 2000). Having demonstrated entitlement as to at least one claim, Plaintiff has satisfied the entitlement requirement for any other legally sufficient claim. *Nike, Inc. v. Palm Beach Crossfit, Inc.*, 116 USPQ2d 1025, 1029 (TTAB 2015).

III. Nonownership

Only the owner of a mark may file a trademark application under Section 1(a) of the Act. *See* Trademark Rule 2.71(d), 37 C.F.R. § 2.71(d) ("An application filed in the name of an entity that did not own the mark as of the filing date of the application is void."); *see also Huang v. Tzu Wei Chen Food Co.*, 849 F.2d 1458, 1460 (Fed. Cir. 1988) (application filed by individual two days after transfer to newly-formed corporation held void); *Am. Forests v. Sanders*, 54 USPQ2d 1860 (TTAB 1999) (intent-to-use

application filed by individual void where the actual entity possessing the bona fide intention to use the mark was a partnership comprised of the individual and her husband), *aff'd*, 232 F.3d 907 (Fed. Cir. 2000) (unpublished); *In re Tong Yang Cement Corp.*, 19 USPQ2d 1689 (TTAB 1991) (application filed by member of joint venture void where mark was owned by the joint venture).

The question presented by these consolidated cases is whether Defendant owed the two marks, THE IDA B. WELLS LEGACY COMMITTEE and IDA'S LEGACY, when she filed the applications to register the marks in her own name. To resolve the ownership issue before us, we consider the following factors:

- (1) the parties' objective intentions or expectations regarding ownership;
- (2) who the public associates with the mark; and,
- (3) to whom the public looks to stand behind the quality of goods or services offered under the mark.

Lyons v. Am. Coll. of Veterinary Sports Med. & Rehab., 859 F.3d 1023, 1026 (Fed. Cir. 2017).

By filing the Applications in her own name, Defendant declared that she was the owner of the marks. 15 U.S.C. § 1051(a)(3)(A). While Defendant included the phrase "dba The Ida B. Wells Legacy," after her name in each application, this phrase does not alter the fact that the applications were filed by Defendant as an individual. The applications were filed in October, 2019. On March 17, 2017, Defendant, as incorporator, formed an Illinois nonprofit corporation named The Ida B. Wells

Legacy.²³ The corporation's term is perpetual and there is no other evidence in the record regarding the status of this business entity.

Applying the first of the *Lyons* factors, we look for evidence of Defendant's objective intentions or expectations during the period up to the May 1, 2019 filing date of the applications. Though our record is thin on this issue, all the evidence points in the same direction. Defendant was not using the marks as an individual. The record is much less clear on which entity was using the marks, but that ultimately does not matter in the context of these proceedings because if Defendant was not the owner when the applications were filed, the applications are void, regardless of who the actual owner was.²⁴

The key evidence in this case comes from the deposition of Ms. Cobb. During that deposition, Ms. Cobb was asked about her prior work and companies she has owned.²⁵ She identified two companies she owns that are unrelated to the issues involved in this proceeding, but she never identified the nonprofit she had incorporated in Illinois in 2017 under the name The Ida B. Wells Legacy.²⁶ Indeed, Ms. Cobb never mentioned this entity during her deposition. When asked about The Ida B. Wells Legacy Committee, Ms. Cobb testified, "I don't consider that a company, but it's a PAC that I created. A political action committee that I created."²⁷ She testified as to the nature

²³ 75 TTABVUE 3-8.

²⁴ See TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 102.01 (2025) ("The Board is empowered to determine only the right to register.").

²⁵ 55 TTABVUE 16-17.

²⁶ *Id.*

²⁷ *Id.* at 17.

and purpose of a PAC and certain state law requirements for operating a PAC in Illinois.²⁸

When asked about the actions of the PAC, Ms. Cobb testified that the PAC owned and used the mark IDA'S LEGACY.²⁹ When asked about activities and events, Ms. Cobb testified consistently that it was the PAC that conducted those events. Importantly, Ms. Cobb testified that the PAC was the party that entered into contracts for functions, contracts Ms. Cobb signed on behalf of the PAC as its President.³⁰ Throughout her testimony about uses of the two trademarks at issue in this case, Ms. Cobb referred to the PAC and what "we" did.³¹ Not once did Ms. Cobb refer to herself as using or owning the marks. She testified that she created the PAC, but it is clear that Ms. Cobb believes the two trademarks are owned and used by a separate entity, the PAC.³²

Later in her deposition—after Ms. Cobb testified about the trademarks and her prior business work—Ms. Cobb was asked directly about her ownership of trademarks. When asked, "Ms. Cobb, do you own any trademarks personally," Ms. Cobb responded "No."³³ When asked if she personally uses any trademarks, Ms. Cobb again testified "No." Defendant argues in her Trial Brief that this testimony is

²⁸ *Id.* at 17-18.

²⁹ *Id.* at 22.

³⁰ *Id.* at 21.

³¹ *Id.* at 18-24.

³² *Id.* at 26-27 (testimony that the two marks IDA'S LEGACY and THE IDA B. WELLS LEGACY COMMITTEE are used somewhat interchangeably).

³³ *Id.* at 59.

misleading, but provides no explanation for why it is misleading and provides no other testimony or documentary evidence to rebut or correct this testimony.³⁴ We find this testimony is consistent with the rest of Ms. Cobb's deposition testimony and reflects her honest responses. There is no rebuttal evidence in the record.

One fact is clear from the record: Defendant did not own or use the two trademarks at the time the applications were filed in her name on May 1, 2019. On May 27, 2017, Ms. Cobb formed the nonprofit Illinois corporation The Ida B. Wells Legacy. Then, about two years later, she filed two trademark applications in the name of Delmarie Cobb dba The Ida B. Wells Legacy. The Ida B. Wells Legacy was not an assumed business name, as the "dba" indicates. It was in fact a distinct legal entity, an Illinois nonprofit corporation. Ms. Cobb was not operating as a sole proprietorship and she did not own the marks. The first *Lyons* factor strongly favors Plaintiff's nonownership claims.

The second *Lyons* factor considers the issue from the perspective of the consumers who receive the services provided under these marks. The evidence is again thin, but as with the first factor, what evidence we have suggests consumers will associate the marks with either the PAC or the nonprofit corporation, rather than with Ms. Cobb as an individual. Indeed, the name of the PAC is identical to one of the marks, THE IDA B. WELLS LEGACY COMMITTEE. This name appears on the specimens submitted with both applications. There are no references to Ms. Cobb in these materials, making it unlikely consumers would associate the marks with Ms. Cobb

³⁴ 85 TTABVue 36-37.

rather than the identified PAC. The second *Lyons* factor also supports Plaintiff's nonownership claims.

The third *Lyons* factor asks who the consuming public will expect to stand behind the services, and again, the only evidence of record identifies the PAC and not Ms. Cobb. Even if Ms. Cobb plays a leading role in the work of the PAC (or of the nonprofit corporation), there is nothing in our record to indicate that consumers are aware of that fact. The third *Lyons* factor also favors Plaintiff's claims. We have not found any evidence in the record to the contrary.

We hold that Plaintiff has proven its lack of ownership claims by a preponderance of the evidence. Defendant did not own the marks when the applications were filed. As to Plaintiff's cancellation claim, it must overcome the statutory presumption that the mark is owned by Defendant, the Registrant. 15 U.S.C. § 1057(b). This presumption is overcome here by the clear and consistent evidence that Ms. Cobb did not own the marks when the applications were filed.

Defendant presented no evidence refuting or contradicting the facts we recited above. Defendant argues that "The deposition of Ms. Cobb provides numerous examples of her and the Ida's Legacy, and Ida B. Wells Legacy Committee use of the *Marks*."³⁵ This statement makes little sense. The last two alleged users of the marks are actually the marks themselves. And Ms. Cobb never testified that she used or owned the marks. As noted above, she consistently testified that the PAC, The Ida B.

³⁵ 85 TTABVue 36 (emphasis in original).

Wells Legacy Committee, owned and used the marks. It was the PAC that was the party to contracts and the PAC that paid the expenses for the events conducted.³⁶

Finally, Defendant argues that if Ms. Cobb was not using the marks, a “related company” was.³⁷ The Board mentioned the concept of a related company in a ruling on a motion filed by Plaintiff.³⁸ The term “related company,” as used in the Trademark Act, is defined as “any person whose use of a mark is controlled by the owner of the mark with respect to the nature and quality of the goods or services on or in connection with which the mark is used.” 15 U.S.C. § 1127. Where the facts demonstrate that an individual owns a corporation, and the ownership is so complete that “the two legal entities ‘equitably constitute a single entity,’ then the individual will be found in sufficient control of the mark such that use by the corporation inures to the benefit of the individual.” *In re Hand*, 231 USPQ 487, 488 (TTAB 1986) (explaining *Smith v. Coahoma Chemical Co. Inc.*, 264 F.2d 916 (CCPA 1959)); *see also Quality Candy Shoppes/Buddy Squirrel of WI Inc. v. Grande Foods*, 90 USPQ2d 1393, 1393 (TTAB 2007) (“[Y]ears of precedent make it very clear that proper use of a mark by a trademark owner’s licensee or related company constitutes ‘use’ of that mark attributable to the trademark owner.”).

³⁶ 55 TTABVUE 21-24.

³⁷ *Id.* at 45-46.

³⁸ 44 TTABVUE 2 (denying a motion for summary judgment filed by Plaintiff on its nonownership claim).

The record shows that Defendant was the incorporator, registered agent and one of three directors of the Illinois nonprofit The Ida B. Wells Legacy.³⁹ There is no additional evidence about this nonprofit business entity. The evidence showing that Defendant was one of three directors of the nonprofit is not evidence of control or domination of the entity. Given the record before us, we find the Illinois nonprofit is not a related company to Defendant.

We also lack sufficient evidence to determine if the PAC constitutes a related company or even a company. While Ms. Cobb testified that she created the PAC, there is no other evidence of how the PAC operates.⁴⁰ Ms. Cobb testified that there is an advisory committee within the PAC that makes important recommendations within the PAC.⁴¹ This committee within the committee suggests the PAC is not an entity solely controlled by Ms. Cobb. Given the record before us, the PAC is not a related company.

Finally, there is no evidence of a trademark license between Defendant and the nonprofit or the PAC. Nor is there evidence that Defendant exercised the level of control over uses of the marks that is necessary for a valid trademark license. Defendant has failed to show that either the nonprofit or the PAC is a related company.

³⁹ 75 TTABVUE.

⁴⁰ 55 TTABVUE 17-18.

⁴¹ *Id.* at 21 (noting the advisory committee has persons with expertise in different areas), 91-92 (identifying members of the advisory committee).

All three *Lyons* factors support our conclusion that Defendant was not the owner of the marks when the applications were filed on May 1, 2019. An application under Section 1(a) filed by someone other than the owner of the mark is void ab initio. Plaintiff has proven its nonownership claims, as to both the applied-for mark THE IDA B. WELLS LEGACY COMMITTEE, and the registered mark IDA'S LEGACY.

Decision: Plaintiff's nonownership claim under Section 1(a) in the opposition proceeding is sustained. Plaintiff's nonownership claim under Section 1(a) in the cancellation proceeding is granted.