

**UNITED STATES PATENT AND TRADEMARK
OFFICE**
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: September 23, 2005

Opposition No. 91164988

Rolex Watch, U.S.A., Inc.

v.

Bugallo, Fernando

Cheryl Butler, Attorney, Trademark Trial and Appeal Board:

This case now comes up on opposer's motion, filed June 17, 2005, to strike certain affirmative defenses asserted by applicant in its answer. Applicant has not responded to opposer's motion.

The affirmative defenses in question are stated at numbered paragraphs 3-5 and state:

- 3) The Notice of Opposition fails to state a claim upon which relief can be granted.
- 4) By asserting its alleged registration against an unsimilar trademark used in connection with significantly different products, Opposer is using its asserted registration to violate the antitrust laws of the United States and/or has committed trademark misuse.
- 5) In view of Opposer's conduct described in Affirmative Defense Four, Opposer has brought this Opposition with unclean hands.

In support of its motion, opposer argues that the third affirmative defense is insufficient as a matter of law because opposer has standing to bring this opposition and has set forth valid grounds for the opposition, and applicant has made no

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showing to the contrary. Where there is no objection, the Board often lets such an affirmative defense stand, according it little or no weight. In this case, however, opposer has moved to strike.

With respect to the fourth and fifth affirmative defenses, opposer argues that the Board does not have jurisdiction to hear antitrust matters. Opposer's articulation of the Board's authority concerning antitrust matters is accurate. See TBMP §102.01 (2d ed. rev. 2004).

Accordingly, opposer's motion to strike applicant's third, fourth and fifth affirmative defenses is granted, and such defenses are hereby stricken. See also TBMP §2.127(a).

To the extent they have been considered suspended, proceedings are resumed. Applicant's answer otherwise is noted and entered.

Discovery and trial dates are reset as indicated below:

THE PERIOD FOR DISCOVERY TO CLOSE:	December 15, 2005
30-day testimony period for party in position of plaintiff to close:	March 15, 2006
30-day testimony period for party in position of defendant to close:	May 14, 2006
15-day rebuttal testimony period to close:	June 28, 2006

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Rule 2.125.

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Briefs shall be filed in accordance with Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Rule 2.129.

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