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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91178149
Party	Plaintiff Trek Bicycle Corporation
Correspondence Address	Mary Catherine Merz Merz & Associates, P.C. 1140 Lake Street, Suite #304 Oak Park, IL 60301-1051 UNITED STATES docket@merz-law.com
Submission	Motion to Strike
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Date	08/15/2007
Attachments	22127.motstrike.pdf (5 pages)(150504 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No. 77/003,861
Filed: September 21, 2006
Date of Publication: June 5, 2007
Mark: STEPTREK

TREK BICYCLE CORPORATION	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 178,149
	)	
REPS DESIGN	)	
	)	
Applicant.	)	

MOTION TO STRIKE ANSWER

Commissioner of Patents and Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Attention: Trademark Trial and Appeal Board

Opposer, TREK BICYCLE CORPORATION, through its attorneys, and pursuant to Fed. R. Civ.P. 12(f) and 37 C.F.R. §2.106(a) hereby moves to strike the Answer filed by the applicant in the above-referenced proceeding. Opposer never received a service copy of applicant's Answer, and the Answer itself does not include a Certificate of Service on opposer or counsel for

opposer as required by TBMP §311.01(c). Applicant's Answer also does not comply with the requirements set forth by 37 C.F.R. §2.114(b)(1) and TBMP §311.02(a).

I. Service Copy of Answer

TBMP §311.01(c) states that a copy of the Answer to a Notice of Opposition "must be served by defendant upon the attorney for the plaintiff, or on the plaintiff if there is no attorney." The Answer must also bear proof "that such service has been made before the paper will be considered by the Board." The applicant did not serve a copy of the Answer to the opposer and also did not include a Certificate of Service on the Answer. Opposer only became aware of applicant's Answer on Monday, August 13, 2007, while reviewing the Board's database for information about this proceeding.

II. Insufficiency of Applicant's Answer

Applicant's answer is not organized in the proper format, because none of applicant's paragraphs correspond to the thirteen numbered paragraphs in opposer's Notice of Opposition. Applicant also has not admitted or denied the averments upon which the petitioner relies.

According to 37 C.F.R. §2.114(b)(1), "[a]n answer shall state in short and plain terms the respondent's defenses to each claim asserted and shall admit or deny the averments upon which

the petitioner relies." Furthermore, pursuant to TBMP §311.02(a), "[i]f the complaint consists of numbered paragraphs setting forth the basis of plaintiff's claims of damage, the defendant's admissions or denials should be made in numbered paragraphs corresponding to the numbered paragraphs in the complaint." Applicant's answers do not comply with either of these provisions, because they do not admit or deny all of the averments upon which opposer relies. Additionally, the paragraphs of applicant's Answer do not correspond with the paragraphs identified in opposer's Notice of Opposition.

More importantly, according to TBMP §311.02(a) "the defendant should not argue the merits of the allegations in a complaint." In Thrifty Corp. v. Bomax Enterprises, 228 USPQ 62 (TTAB 1985) the Board did not accept applicant's answer since the answer was "basically argumentative rather than a proper responsive pleading to the notice of opposition." The Board stated that an answer that is only argumentative does not comply with Rule 8(b) of the Federal Rules of Civil Procedure. Applicant does not admit or deny any of the averments upon which opposer relies but instead the answer is argumentative. For example, in paragraph 4 of the Applicant's Answer, the applicant argues opposer's marks and applicant's mark are distinct. The answer states "the Steptrek mark is dissimilar by the fact that

it is always spelled "STEPTREK" beginning with the letters "STEP" as a single word title, with no spaces between letters." The applicant's answer does not admit or deny the averments to which the opposer relies on in paragraph 4 of its Notice of Opposition but instead the applicant presents argument.

Based on the explanation and argument set out above, opposer respectfully requests that the Answer be stricken. In the alternative, applicant requests at a minimum that the non-answered averments be deemed admitted and the immaterial and impertinent matter in the Answer be stricken.

Respectfully submitted,
TREK BICYCLE CORPORATION

Dated: August 15, 2007 By: _____

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MOTION TO STRIKE was served on the applicant by First Class Mail this 15th day of August 2007, addressed to:

Michael Reps
Owner
Reps Design
20020 Swallow Street NW
Cedar, MN 55011-4211

Date: August 15, 2007 By: [signature]