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

Baxley

Mailed: April 25, 2008

Opposition No. **91178747**

Mine Design a d.b.a. of Amal Flores

v.

Votivo, Ltd. and Votivo, LLC

Andrew P. Baxley, Interlocutory Attorney:

On February 6, 2008, opposer filed a motion for summary judgment in this proceeding and served a copy of that motion by mail upon applicant. On March 12, 2008, applicant timely filed a combined brief in opposition to opposer's motion and cross-motion for summary judgment and served a copy thereof upon opposer.

On April 4, 2008, opposer timely filed a combined reply brief in support of his motion for summary judgment and brief in response to opposer's cross-motion for summary judgment. On April 21, 2008, opposer then filed a motion to strike certain exhibits that applicant submitted with its combined brief in opposition to opposer's motion and cross-motion for summary judgment.

However, under Trademark Rule 2.127(e)(1), opposer was allowed to file only a brief and a reply brief in support of

its motion for summary judgment and a brief in response to applicant's cross-motion for summary judgment. Any objections to exhibits that applicant submitted with its combined brief in opposition to opposer's motion and cross-motion for summary judgment should have been raised in its combined reply brief in support of his motion for summary judgment and brief in response to opposer's cross-motion for summary judgment.

Opposer's motion to strike is an additional filing in connection with the cross-motions for summary judgment that is expressly forbidden by Trademark Rule 2.127(e)(1). As such the motion to strike is not properly before the Board and is therefore denied. To the extent that opposer seeks leave from the Board to file the motion, there is no provision that gives the Board discretion to grant such leave.

The motions for summary judgment will be decided in due course.