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

Proceeding	91181621
Party	Plaintiff StonCor Group, Inc.
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Date	02/19/2010
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**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

StonCor Group, Inc.	:	
	:	
Opposer	:	
v.	:	Opposition 91181621
	:	
	:	Application 76/650,832
	:	
Les Pierres Stonedge, Inc.	:	Mark: STONEDGE
	:	
Applicant	:	

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Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

**STONCOR’S MOTION TO STRIKE THE MATERIALS
ATTACHED TO LES PIERRES’ MAIN BRIEF**

Opposer, StonCor Group, Inc. (“StonCor”), by and through its counsel, Fox Rothschild LLP, respectfully requests the Board to strike the materials attached to the Main Brief of Applicant, Les Pierres Stonedge, Inc. (“Les Pierres”) pursuant to Trademark Rule of Practice (“Trademark Rule”) 2.128(b) and Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) Section 539. 37 CFR § 2.128(b); TBMP § 539. In the alternative, StonCor requests an opportunity to be heard as to the propriety of taking judicial notice of the proffered materials

pursuant to Federal Rule of Evidence 201(e) and TMBP Section 704.12(b). FED. R. EVID. 201(e) and TMBP § 704.12(b).¹

1. The Evidentiary Materials Attached to Les Pierres' Main Brief Should be Stricken for Failure to Comply with Trademark Rule 2.128(b) and TMBP Section 539.

In its Brief, Les Pierres requests the Board to take judicial notice of four different dictionary definitions. *See* Les Pierres' Main Brief at pp. 10 n.3, 11 n.4, 15 n.6, Exhibits A-C. Judicial notice in this instance is improper because Les Pierres failed to submit its request with a notice of reliance during its testimony period, as required by TMBP Section 704.12(b) and Trademark Rule §2.122. TMBP § 704.12(b); 37 CFR § 2.122. TMBP Section 539 additionally provides that “evidentiary material attached to a brief on the case can be given no consideration unless it was properly made of record during the testimony period of the offering party,” and that “if evidentiary material not of record is attached to a brief on the case, an adverse party may object thereto by motion to strike or otherwise.” TMBP § 539. StonCor therefore respectfully requests that the Board strike the materials attached to Les Pierres' Brief. Specifically, StonCor respectfully requests that the Board strike Exhibits A-C attached to Les Pierres' Brief.

2. If the Materials Attached to Les Pierres' Brief are Not Stricken, StonCor Should Have an Opportunity to be Heard Pursuant to Federal Rule of Evidence 201(e) and TMBP Section 704.12(b).

Federal Rule of Evidence 201(e) provides that a party, which in this case would be StonCor, “is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed.” FED. R. EVID. 201(e); *see also*, TMBP § 704.12(c) (quoting same). StonCor has alleged above why taking judicial notice would be improper in this case. StonCor therefore respectfully requests that if the Board does not strike

¹ Although StonCor recognizes that Les Pierres fails to include an index of cases in their Main Brief, as required by Trademark Rule of Procedure 2.128(b), 37 CFR § 2.128(b), StonCor has opted not to move to strike the brief in its

the materials attached to Les Pierres' Brief, that the Board provide StonCor with an opportunity to be heard as to the propriety of taking judicial notice of the aforementioned evidentiary materials.

Respectfully submitted,

Date: 19 February 2010

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entirety, but rather to focus on the substantive evidentiary issues that more acutely affect this opposition.

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Les Pierres Stonedge, Inc.	:	
	:	
	:	
Applicant	:	

CERTIFICATE OF SERVICE

I, Charles N. Quinn, of full age, by way of certification, state that a copy of the foregoing paper was served on applicant's counsel on the date set forth below via first class mail, postage prepaid, addressed as follows:

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Date: 19 February 2010

/Charles N. Quinn/

Charles N. Quinn