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

Proceeding	91186473
Party	Plaintiff Apex, LLC
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Submission	Opposition/Response to Motion
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Date	03/20/2009
Attachments	Opposition to Motion to Strike 3.20.09.pdf ( 3 pages )(14916 bytes )

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

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<b>APEX, LLC</b>	:	
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<b>Opposer,</b>	:	
	:	<b>Opposition No. 91186473</b>
v.	:	<b>Serial No. 77/243,433</b>
	:	<b>Mark: APEX PAVERS (and design)</b>
<b>APEX PAVERS, INC</b>	:	<b>Filing Date: July 31, 2007</b>
<b>Applicant</b>	:	

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**OPPOSER’S BRIEF IN SUPPORT OF ITS OPPOSITION  
TO APPLICANT’S MOTIONS TO STRIKE**

The Board should deny Applicant’s Motions to Strike (Docket #s 11 and 12). It represents classic unnecessary motion practice and it has once again been precipitated by Applicant’s unwillingness to consent to any deadline extensions. Given that there are no emergent circumstances, it is unclear why Applicant’s counsel refuses to cooperate on any scheduling issues.

Briefly, on January 3, 2009, Applicant filed a Motion to Amend its application to register the Apex Pavers (and design) Mark. Applicant sought to change the date of first use. Counsel for the Opposer contacted Applicant’s counsel, explained that she had just joined the Opposer as in-house trademark counsel, and requested an extension of time to respond to the Motion to Amend. Applicant’s counsel refused.

Because of this refusal, Opposer filed a Motion for an extension of time. It was filed on January 23, 2009 -- the day a response to the Motion to Amend was due. Opposer asked for 30 days. Consistent with past behavior, Applicant filed an objection.

On February 23, 2009, not having heard from the Board on its Motion to Extend, and out of an abundance of caution, Opposer submitted a Brief in support of its Opposition to

Applicant's Motion to Amend. It also submitted a Reply Brief in response to Applicant's Opposition to the Motion to Extend.

Now, Applicant is asking the Board to strike both of Opposer's Briefs -- the Opposition to Applicant's Motion to Amend, and the Reply Brief to Applicant's Opposition to Opposer's Motion to Extend. Both Motions to Strike should be denied.

**1. Opposer's Opposition to the Motion to Amend**

Applicant claims that the Opposition to the Motion to Amend should be stricken because the Board has not yet ruled on Opposer's Motion to Extend. What this argument overlooks is that when Opposer filed its Motion to Extend on January 23, 2009, it asked for a 30-day extension. Accordingly, when February 23, 2009 came, this gave Opposer a Hobson's choice. It could either file its Brief within the 30 days it had requested, or it could continue to wait before filing -- in which case the Applicant presumably would claim the Brief was late.

The Board should deny the Motion to Strike. If it grants the Motion to Extend, this issue is moot. Also, Opposer would be happy to resubmit the Brief if the Board believes Opposer should have waited for the Board to rule. Alternatively, if the Board does not grant the Motion to Extend, it can strike the Brief.

**2. Opposer's Reply to Applicant's Opposition to the Motion to Extend**

Applicant also claims that Opposer's Reply Brief in further support of its Motion to Extend was untimely. Opposer leaves it to the Board's sound judgment whether to consider the Reply Brief or not.

Respectfully Submitted,  
**APEX, LLC**  
By Its Attorney:

/Brent R. Canning/

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Dated: March 20, 2008

### **CERTIFICATE OF ELECTRONIC MAILING**

I hereby certify that the foregoing Opposition Brief is being submitted electronically through the Trademark Trial and Appeal Board's ESTTA System on March 20, 2009.

/Brent R. Canning/

Brent R. Canning

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Opposition Brief is being deposited with the U.S. Postal Service with sufficient postage as first class mail March 20, 2009 in an envelope addressed to Applicant's attorney of record at the following address:

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/Brent R. Canning/

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