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

Mailed: November 16, 2008

Opposition No. **91186494**

Kraft Foods Global Brands LLC

v.

Brown, Anthony

On October 20, 2008, opposer filed a motion to strike applicant's affirmative defenses under Fed. R. Civ. P. 12(f). Although the motion has not been contested, the Board exercises its inherent authority to decide the motion on its merits.

Applicant's first-numbered affirmative defense alleges that the notice of opposition fails to state a claim upon which relief can be granted. Federal Rule 12(b)(6) permits a defendant to assert in its answer the "defense" of failure to state a claim, thereby allowing the plaintiff to test the sufficiency of the defense by moving under Federal Rule 12(f) to strike it. *Order of Sons of Italy in America v. Profumi Fratelli Nostra AG*, 36 USPQ2d 1221, 1222 (TTAB 1995). It is adjudged that the notice of opposition sufficiently alleges opposer's standing and states a claim under Section 2(d) of the Trademark Act. Thus, the

"defense" is insufficient and opposer's motion to strike it is granted. Applicant's first affirmative defense is hereby stricken.

Applicant's remaining affirmative defenses merely amplify its denial of opposer's likelihood of confusion claim. The Board may decline to strike even objectionable matter where its inclusion will not prejudice the adverse party, but rather will provide fuller notice of the basis for a claim or defense. See Fed. R. Civ. P. 12(f); TBMP § 506 (2d ed. rev. 2004) and authorities cited therein. Accordingly, opposer's motion with respect to the remaining affirmative defenses is denied and they will not be stricken.

Trial dates, including conferencing, disclosure and discovery dates, remain as set.

***By the Trademark Trial
and Appeal Board***