

ESTTA Tracking number: **ESTTA378369**

Filing date: **11/12/2010**

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

Proceeding	91188973
Party	Plaintiff Gapardis Health and Beauty, Inc.
Correspondence Address	DAVID M. ROGERO DAVID M. ROGERO, P.A. 2625 PONCE DE LEON BLVD., SUITE 280 CORAL GABLES, FL 33134 UNITED STATES dmrogero@dmrpa.com
Submission	Other Motions/Papers
Filer's Name	David M. Rogero
Filer's e-mail	dmrogero@dmrpa.com
Signature	/s/David M. Rogero/
Date	11/12/2010
Attachments	Second Motion for order granting motion to strike aff defense 111210.pdf (2 pages)(14794 bytes)

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD
Consolidated Proceedings**

Gapardis Health and Beauty, Inc.

Opposition No. 91188973

v.

Gulam Nasser

Gulam Nasser

Cancellation No. 92052226

v.

Gapardis Health and Beauty, Inc.

**OPPOSERS' SECOND MOTION FOR ORDER GRANTING MOTION TO
STRIKE AFFIRMATIVE DEFENSE AS CONCEDED**

Opposers move pursuant to 37 C.F.R. § 2.127(a) for entry of an order granting Opposers' Motion to Strike Affirmative Defense, filed March 2, 2010, as conceded by the lack of response from Applicant.

In his Amended Answer, Applicant asserted as an affirmative defense that the Opposers' claims are barred by the doctrines of laches, estoppel, or acquiescence. Opposers' moved to strike the affirmative defense as legally insufficient.

In September of this year, Opposers requested, Section § 2.127(a), that their motion to strike be granted for Applicant's failure to respond or oppose the motion. Under Section 2.127(a), "When a party fails to file a brief in response to a motion, the Board may treat the motion as conceded."

In the Board's Order entered September 23, 2010, inter alia, Applicant was granted until October 21, 2010 to file his response to Opposers' motion to strike.

Applicant has failed to file a brief in response to the motion to strike within the time granted by the Board.

By his failure to respond, Applicant has conceded that the defenses of laches, estoppel, and acquiescence are legally insufficient and should be stricken. Accordingly, an order granting Opposers' motion to strike should be entered.

Respectfully submitted,

/s/David M. Rogero/

DAVID M. ROGERO, P.A.
2625 Ponce de Leon Boulevard, Suite 280
Coral Gables, Florida 33134
Telephone (305) 441-0200
Fax (305) 460-4099
Attorney for Opposers

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion was served upon Applicant's counsel at the addresses below by U.S. Mail on the 12th day of November, 2010:

A. David Logan
Carey Brandt Anthony
Michael F. Campillo
Venable, Campillo, Logan & Meaney, P.C.
1938 E. Osborn Rd.
Phoenix, Arizona 85016

/s/David M. Rogero/