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

Proceeding	91190169
Party	Plaintiff SUSINO UMBRELLA CO., LTD.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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In the Matter of App. Ser. No. 77/355,544)	
)	
Susino Umbrella Co., Ltd.,)	
)	
Opposer,)	
v.)	Opposition No. 91190169
)	
Susino USA LLC,)	
)	
Applicant.)	

**OPPOSITION TO “APPLICANT’S OBJECTION
AND MOTION TO STRIKE EXHIBITS ATTACHED TO OPPOSER’S BRIEF”**

Opposer Susino Umbrella Co., Ltd. (“Opposer” or “Susino Umbrella”) hereby opposes “Applicant’s Objection and Motion to Strike Exhibits Attached to Opposer’s Brief” (“Motion to Strike”), filed by Applicant Susino USA, LLC’s (“Applicant”). Applicant’s Motion to Strike requests that the Board strike Opposer’s Exhibits 1 through 10 and 15, to Opposer’s Motion for Relief from Judgment (“Motion for Relief”).

I. Applicant’s Motion to Strike Misapplies the Evidentiary Standard for a Motion for Relief from Judgment

Applicant’s Motion to Strike is misplaced because TBMP § 539, on which Applicant relies, specifically applies to a “brief on the case.” A “brief on the case” is described by the Board as “the main brief of the party in the position of plaintiff, the answering brief of the party in the position of defendant, and the reply brief of the party in the position of plaintiff.” TBMP § 539. Facts and arguments presented in a “brief on the case” must be based on evidence offered at trial. TBMP § 801.01. This strict requirement is due to the fact that a “brief on the case” goes to the merits of the case, and the ultimate resolution of the proceeding.

That is not the case here. Opposer has not submitted a “brief on the case,” nor any other pleading that would resolve this case on its merits. *Cf.* TBMP 528.05(e) (stating that materials that are not self-authenticating may be admissible “in connection with a summary judgment motion, if competent and relevant, provided they are properly authenticated by affidavit or declaration...”). Opposer’s brief was submitted in support of its Motion for Relief. For such a brief, the Board rules do not require that documentary evidence be authenticated or otherwise made “of record.” Rather, the Board requires that the moving party “persuasively show (preferably by affidavits, declarations, documentary evidence, etc., as may be appropriate) that the relief requested is warranted for one or more of the reasons specified in Fed. R. Civ. P. 60(b).” TBMP § 544.

The exhibits at issue were provided for the limited purpose of supporting Opposer’s Motion for Relief under Fed. R. Civ. P. Rules 60(b)(1), (4) and (6). As such, they were not required to be made part of the record, either by authentication or trial procedure. Opposer has not presented exhibits in an attempt to inappropriately enter them into the record, nor has it requested that the Board consider the exhibits to resolve the underlying merits of the case.

II. There Is No Evidence of Record Because Applicant’s Summary Judgment Motion was Filed Prior to the End of Discovery

Not only is it unnecessary for Opposer to rely only on “record” evidence to support its Motion for Relief, it would have been impossible to do so because Applicant’s summary judgment motion was filed on March 12, 2010, prior to the end of discovery, and well before Opposer’s trial period was originally scheduled to end on August 9, 2010. On March 26, 2010, the Board suspended this proceeding. Accordingly, no evidence has been made of record by either party.

III. Declarations Not Limited to Persons Identified in Initial Disclosures

Applicant states that the person named in Opposer's initial disclosures – Jorzon Wang – is not the same person who made the declaration – Anbang Wang – the suggestion being that only those individuals identified in an initial disclosure may submit a declaration in the proceeding. This argument is without merit. There is no rule in the Federal Rules of Civil Procedure or TBMP that limits declarations and affidavits to only those individuals identified in an initial disclosure.

Moreover, for purposes of Opposer's Motion for Relief, which turns on matters relating to corporate authority and knowledge of pleadings made in this proceeding, Mr. Anbang Wang, as President of Susino Umbrella, is the most competent person to address these issues. Consequently, Mr. Wang's declaration was both appropriate and necessary.¹

Finally, Opposer notes that at the same time Applicant complains about the evidentiary status of Opposer's supporting documents, it submitted exhibits with its response to Opposer's Motion for Relief, none of which were made part of the record during trial, and without any supporting declaration or affidavit. At the very least, it is duplicitous of Applicant to do the very thing that it seeks to preclude Opposer from doing.

¹ While Opposer's documentary evidence in support of its Motion for Relief was properly presented to the Board, out of an abundance of caution, Opposer has attached to its reply to Applicant's response to the Motion for Relief the Declarations of Jorzon Wang and Carter Guan, both employees of Susino Umbrella who had numerous contacts with Applicant's principals during the course of their role as sales agents for Opposer between 2002 and 2007, as well as the Declaration of David Silverman, counsel for Opposer. These declarations address, among other things, the authenticity of the exhibits in question. This includes authentication of Exhibit 1 to the Motion for Relief, which is an Internet printout revealing the results of a search for "Susino USA" on the Florida Secretary of State, Division of Corporations' website, and therefore self-authenticating. See *Safer, Inc. v. OMS Investments, Inc.* Opp. No. 91176445 (Feb. 23, 2009)). The Board may, in its discretion, accept such additional declarations in order to more fully understand and appreciate the facts of this particular case. Cf. *Shalom Children's Wear Inc. v. In-Wear A/S*, 26 U.S.P.Q.2d 1516 (TTAB 1993) (exercising discretion under Fed. R. Civ. P 56(e) to consider additional evidence and accompanying affidavit submitted on reply). Consequently, the Motion to Strike is moot.

Accordingly, if the Board does grant Applicant's Motion to Strike, Applicant's exhibits 4, 6, 8 and 9 should also be stricken since they are not part of the record or supported by affidavit or declaration.

Conclusion

Applicant's Motion to Strike should be denied because it misapplies the standard for relying on documentary evidence in a motion for relief from judgment. In particular, it relies on the standard for a "brief on the case," which is not present here.

Should the Board grant Applicant's Motion to Strike, however, Opposer respectfully requests that the Board correspondingly strike Applicant's exhibits 4, 6, 8 and 9.

Respectfully submitted,

SUSINO UMBRELLA CO., LTD.

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October 12, 2010

CERTIFICATE OF SERVICE

I hereby certify that a complete and true copy of the foregoing OPPOSER'S OPPOSITION TO APPLICANT'S "OBJECTION AND MOTION TO STRIKE EXHIBITS" was sent via first-class United States, postage prepaid mail on October 12, 2010 to the following:

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