ESTTA Tracking number: **ESTTA383622**
Filing date: **12/14/2010**

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

Proceeding	91197005
Party	Plaintiff Gold Rush Brands, LLC
Correspondence Address	EDMUND J FERDINAND III GRIMES & BATTERSBY LLP 488 MAIN AVENUE NORWALK, CT 06851 UNITED STATES ferdinand@gandb.com
Submission	Opposition/Response to Motion
Filer's Name	Edmund J. Ferdinand, III
Filer's e-mail	ferdinand@gandb.com
Signature	/ejf/
Date	12/14/2010
Attachments	Opposition to Motion.pdf (3 pages)(111805 bytes)

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

In the Matter of Trademark Application Serial No. 77/931,658
For the Mark PAN AM & Design

Gold Rush Brands, LLC, Opposer, v. Pan Am World Airways, Inc., Applicant	Opposition No.: 91/197,005

OPPOSER'S OPPOSITION TO APPLICANT'S MOTION TO AMEND

Gold Rush Brands, LLC ("Opposer"), hereby responds to the Motion to Amend filed by Applicant, Pan Am World Airways, Inc. ("Applicant"), on November 24, 2010. By that motion, Applicant represents to the Board that: (1) the entity that filed the application that forms the basis of this proceeding, Pan Am World Airways, Inc., does not in fact exist; and (2) the filing error was inadvertent.

For purposes of background, it should be noted that Opposer is an entity that owns broad rights to the trademark PAN AM internationally for use in connection with airline services in Int'l Class 39.

In terms of the substance of Applicant's motion, Opposer wishes to make two points. First, Opposer submits that Applicant's motion is premature. The relief that Applicant seeks herein is tantamount to a ruling on the merits of the underlying Opposition proceeding, in which Opposer has claimed that Applicant's filing was fraudulent. Whether or not Applicant's filing error was, in fact, inadvertent is a factual issue that is likely to be the subject of discovery in this

case, including, in particular, depositions of the various affiants on the instant motion. Hence, Applicant's motion is akin to a summary judgment motion, in that Applicant seeks relief on an ultimate issue in the case as a matter of law. In that respect, Opposer respectfully submits that Applicant's motion should not be granted because it is premature – discovery has not even begun in the case, which was only recently filed. Opposer will need to examine Applicant's witnesses under oath and seek document discovery in the ordinary course.

Second, assuming, for the sake of argument, the veracity of Applicant's representations that the filing error was inadvertent, the type of motion filed by Applicant is not routinely granted. In fact, the Board has refused such motions where circumstances so required. *See* TMEP §§ 802.06 and 802.07; *In re Tong Yang Cement Corp.*, 19 USPQ2d 1689 (TTAB 1991) (correction not permitted where joint venture owned the mark but the application was filed by a corporation which was one member of the joint venture); *In re Atlanta Blue Print Co.*, 19 USPQ2d 1078 (Comm'r 1990); *In re Techsonic Industries, Inc.*, 216 USPQ 619 (TTAB 1982); and *In re Eucryl Ltd.*, 193 USPQ 377 (TTAB 1976).

Accordingly, Opposer requests that Applicant's motion to be denied as premature, and for such other and further relief as the Board deems just and proper.

Dated: December 14, 2010

Respectfully submitted,
Gold Rush Brands, LLC

By: _____

Edmund J. Ferdinand
Grimes & Battersby, LLP
488 Main Avenue
Norwalk, CT 06851-1008
(203) 849-8300
Attorneys for Opposer

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Notice of Opposition was served on the Applicant on this 14th day of December, 2010, by sending a copy of the document in an envelope via U.S. mail addressed to the Applicant:

Daniel Garrelick, Esq.
Springfield Terminal Railway Co.
1700 Iron Horse Park
Billerica, MA 01862

Edmund J. Ferdinand, III