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

Proceeding	91197289
Party	Defendant Sunne & LaBouff, LLP
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Submission	Motion to Dismiss - Rule 12(b)
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application of : Sunne Law, P.C.
Serial No. : 77/895,152
Filed : December 16, 2009
Mark : SUPERHERO LAWYERS
Published Official Gazette : May 11, 2010

DC COMICS and
MARVEL CHARACTERS, INC.,

Opposers,

v.

SUNNE LAW, P.C.

Applicant.

Opposition No. 91197289

SUNNE LAW, P.C.'S MOTIONS:

- (1) TO DISMISS FOR FAILURE TO STATE A CAUSE OF ACTION PURSUANT TO FED. R. CIV. PROC. 12(B)(6); and**
- (2) TO STRIKE PARAGRAPHS 14, 15, 16, 17, 18, 19, 20, AND EXHIBIT C OF THE NOTICE OF OPPOSITION AS BEING IMMATERIAL, IMPERTINENT, AND/OR SCANDALOUS PURSUANT TO FED. R. CIV. PROC. 12(F).**

Pursuant to Fed. R. Civ. Proc. 12(b)(6), Fed. R. Civ. Proc. 12(f), Trademark Trial and Appeal Board Manual of Procedure ("T.B.M.P.") §§ 307.02(a) and 503.03, Sunne Law, P.C. ("Applicant"), hereby moves to dismiss Opposers' Notice of Opposition for failure to state a claim upon which relief may be granted (Fed. R. Civ. Proc. 12(b)(6)), or, in the alternative, to strike Paragraphs 14, 15, 16, 17, 18, 19, 20, and Exhibit C of the Notice of Opposition pursuant to Fed. R. Civ. Proc. 12(f). The present motion is filed contemporaneously with Applicant's

Answer, as required by T.B.M.P. § 503.01, and it embodies Applicant's brief, as permitted by 37 C.F.R. § 2.127(a).

I. OPPOSERS' CLAIM THAT APPLICANT'S USE OF THE *WORD MARK* "SUPERHERO LAWYERS" FOR "LEGAL SERVICES" CREATES A LIKELIHOOD OF CONFUSION WITH ANY OF OPPOSERS' REGISTERED TRADEMARKS HAS NO FACTUAL OR LEGAL BASIS, WHEREFORE OPPOSER'S NOTICE OF OPPOSITION FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED.

Opposers claim ownership to a number of federal trademark registrations, all of which relate to Opposers' sale of *goods* including "masquerade costumes" in International Class 025 (U.S. Reg. No.825,835); "toy figures" in International Class 028 (U.S. Reg. No. 1,140,452); "publications" in International Class 016 (U.S. Reg. No. 1,179,067); and "t-shirts" in International Class 025 (U.S. Reg. No. 3,674,448). Notably, all of Opposers' marks relate to *goods* which depict *fictional* characters who use their *fictional* superhuman abilities to thwart *fictional* criminal activities; and, notably, they do so without regard for the Constitutional rights of any of the alleged "criminals" who they "bring to justice" without so much as a miniscule consideration of their presumption of innocence, as such is the way of comic book fiction.

As clearly admitted by Opposers (*See*, ¶ 4 of the Notice of Opposition), Opposers are engaged in the publishing business, and their various marks relate to *goods* associated therewith, along with the *fictional* characters depicted in their publications. Applicant, on the other hand, provides *real* "legal services" to *real* clients. Accordingly, any claim that Applicant's use of its *word mark* "Superhero Lawyers" for "legal services" could conceivably be likely to confuse is incomprehensible. Clearly, no one seeking legal advice would go to Opposers, just as no one seeking a comic book, a toy figure, a t-shirt, or a masquerade costume would go to Applicant, as Applicant provides *real* legal services to *real* clients. Unlike Opposers, Applicant acts solely through duly *licensed* attorneys-at-law.

It is factually and legally absurd for anyone to argue, much less conclude, that there is a scintilla of likelihood that any *real* person seeking *real* legal advice or representation would confuse Opposers' goods depicting *fictional* characters with Applicant's *actual* services. It is also factually and legally absurd for anyone to argue, much less conclude, that there is a scintilla of likelihood that anyone seeking a comic book, t-shirt, toy figure, or masquerade costume would show up at Applicant's law office for any of those goods.

Opposers' registrations are all for marks relating to *goods*, whereas Applicant's "Superhero Lawyers" mark ("Mark") is used solely for *services* rendered by Applicant through duly licensed attorneys. In fact, even if Opposers wanted to expand the use of their marks to areas relating to services, they could not do so with respect to "legal services", as legal services require licenses based upon education, training, and bar admissions, none of which are possessed by *any* of Opposers' *fictional* characters.

II. PARAGRAPHS 14, 15, 16, 17, 18, 19, 20, AND EXHIBIT C OF THE NOTICE OF OPPOSITION SHOULD BE STRUCK AS BEING IMMATERIAL AND/OR IMPERTINENT PURSUANT TO FED. R. CIV. PROC. 12(F).

Applicant's mark is a word mark, namely, "Superhero Lawyers" ("the Mark"), used by Applicant (a professional corporation engaged in the practice of providing legal services) as a mark relating to the "legal services" offered by Applicant to its very *real* clients. In that the Mark is a word mark, any reference to allegedly "infringing" characters is immaterial and/or impertinent and should be struck from the pleadings.

In particular, Opposers' Notice of Opposition includes several paragraphs, including, *inter alia*, Paragraphs 14-19, as well as Exhibit C, which relate solely to issues associated with fictional "characters" to which Opposers claim rights. In that Applicant's Mark is a word mark,

and in that Applicant has claimed no trademark right to any character, the allegations in the Notice of Opposition as to claims of ownership of, or confusion as to, various characters, are wholly irrelevant, immaterial, and/or impertinent, wherefore they should be struck from the Notice of Opposition.

Further, Paragraph 20 contains baseless, frivolous, unfounded, defamatory, and scandalous remarks relating to hypothetical “objections or faults” associated with Applicant’s legal services. Such remarks are reprehensible and should be struck from the Notice of Opposition, and this honorable Trademark Trial and Appeal Board should severely admonish Opposers’ counsel as to the impropriety associated with any such remarks.

CONCLUSION

In view of the foregoing, Applicant respectfully requests that the present Opposition be dismissed.

Alternatively, Applicant respectfully requests that the TTAB issue an Order requiring Opposers to refile their Notice of Opposition without the immaterial and impertinent mention of the various characters which are wholly irrelevant to Applicant’s application to register the word mark “Superhero Lawyers” for “legal services” in International Class 045.

Respectfully submitted,

Dated: December 16, 2010

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CERTIFICATE OF SERVICE

Undersigned hereby certifies that, on the date set forth below, a copy of the foregoing:

SUNNE LAW, P.C.'S MOTIONS:

- (3) TO DISMISS FOR FAILURE TO STATE A CAUSE OF ACTION PURSUANT TO FED. R. CIV. PROC. 12(B)(6); and**
- (4) TO STRIKE PARAGRAPHS 14, 15, 16, 17, 18, 19, 20, AND EXHIBIT C OF THE NOTICE OF OPPOSITION AS BEING IMMATERIAL, IMPERTINENT, AND/OR SCANDALOUS PURSUANT TO FED. R. CIV. PROC. 12(F).**

was served through the electronic filing system of the U.S. Patent and Trademark Office, Trademark Trial and Appeal Board, and by first class mail, postage prepaid, upon Opposer's counsel, addressed as follows:

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Dated: December 16, 2010

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