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

| | |
|------------------------|---|
| Proceeding | 91198483 |
| Party | Plaintiff PsyBar LLC |
| Correspondence Address | JAMES KRETSCH KRETSCH AND GUST LLC 5151 EDINA INDUSTRIAL BOULEVARD, SUITE 650 MINNEAPOLIS, MN 55439 UNITED STATES jkretsch@kretschgust.com, jjossart@kretschgust.com, smeyman@kretschgust.com, nbowen@kretschgust.com |
| Submission | Motion to Strike |
| Filer's Name | James J. Kretsch, Jr. |
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| Signature | /s/ James J. Kretsch, Jr. |
| Date | 08/10/2012 |
| Attachments | 2012.08.10 E-FILED OPPOSERS MOTION AND MOL TO STRIKE.pdf (2 pages)(25101 bytes) 2012.08.10 E-FILED AFFIDAVIT OF SERVICE.pdf (1 page)(17808 bytes) |

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

PsyBar, LLC,

Opposer,

v.

David Mahony, PhD.,

Applicant.

Opposition No.: 91198483

Serial No.: 85095429

**OPPOSER PSYBAR, LLC'S MOTION
AND MEMORANDUM TO STRIKE
APPLICANT'S REPLY MEMORANDUM
DATED AUGUST 5, 2012**

INTRODUCTION

Pursuant to T.B.M.P. §502, *et.seq.*; Fed. R. Civ. P. 56, and 37 C.F.R. 2.127, Opposer PsyBar, LLC submits this Motion and Memorandum in support of its Motion for Summary Judgment and its Motion to Strike Applicant's pleading dated August 5, 2012.

In the context of summary judgment, a non-moving party's only brief to the Court will be its response memorandum. Applicant, the non-moving party, is not allowed to submit a memorandum in reply to Opposer's Reply. Even if he was, Applicant had until no later than August 2, 2012 to file and serve his Brief, which he failed to do. Applicant has established a pattern of refusing to abide by the Rules of Civil Procedure and applicable statutes. He failed to timely interpose an Answer, failed to timely respond to Opposer's Motion for Summary Judgment, failed to properly request a continuance and now attempts to file a Brief he is not allowed to under the Rules. There is no room for discretion on this issue and the Court should strike Applicant's Reply Brief and all related documents in their entirety.

ARGUMENT

Opposer filed and served its Reply Memorandum on July 18, 2012. Thus, Applicant had no further opportunities to comment. Even if he had, the time to do so has elapsed. Applicant's Reply, if allowed, was due no later than August 2, 2012, and could not exceed 10 pages in length. *See 37 C.F.R., 2.127(e)(1)*. At no time has Applicant served a Motion for Leave to Reply or a Motion for an Extension of Time. Applicant's reply must be stricken because there is no basis to accept it, and even if there was, it is untimely. *See T.B.M.P. § 502(B); 37 C.F.R. 2.127(a)*.

CONCLUSION

For the foregoing reasons, Applicant's Reply Brief date August 5, 2012 and all supporting documentation should be stricken from the record.

Respectfully submitted,

KRETSCH & GUST, PLLC

Dated: August 10, 2012

/s/ James J. Kretsch, Jr.
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AFFIDAVIT OF SERVICE

PsyBar, LLC v. David Mahony, Ph.D.
Opposition No.: 91198483; Serial No.: 85095429

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

Nichole L. Bowen, being first duly sworn, states that on August 10, 2012, she served the following:

**OPPOSER PSYBAR LLC’S MOTION TO STRIKE
APPLICANT’S REPLY MEMORANDUM DATED AUGUST 5, 2012**

on:

David Mahony, Ph.D.
30 Bayard Street, Apt. #1F
Brooklyn, NY 11211

by electronic mail to said person at drdavidmahony@gmail.com, in addition to sending said person a true and correct copy of the same by U.S. Mail, sealed in a postage paid envelope, addressed to him at his last known address.

/s/ Nichole L. Bowen
Nichole L. Bowen

Subscribed and sworn to before me
this 10th day of August, 2012.

/s/ James J. Kretsch, Jr.
Notary Public

{SEAL}