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

Proceeding	91200818
Party	Plaintiff Mr.George A. Powell
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Attachments	Response to Motion to Strike.pdf ( 5 pages )(102996 bytes )

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

In the matter of Application Serial No. 85145920  
For the mark: JUST BONES BOARDWEAR  
Filing Date: October 6, 2010  
Publication Date: March 22, 2011

GEORGE A. POWELL,	)	
	)	
OPPOSER,	)	
	)	
v.	)	OPP. NO. 91200818
	)	
	)	
JUST BONES BOARDWEAR	)	
LIMITED LIABILITY COMPANY,	)	
	)	
APPLICANT.	)	
	)	

**RESPONSE TO APPLICANT’S MOTION TO STRIKE OR IN ALTERNATIVE  
MOTION FOR MORE DEFINITE STATEMENT**

Opposer responds to “Applicant’s Motion to Strike or in the alternative a Motion for More Definite Statement.” Applicant’s motion seeks to strike certain portions of the Notice Of Opposition or in the alternative for a more definite statement with regard to certain alleged vague and ambiguous references to Opposer’s trademark rights. For the reasons set forth below the motion should be denied.

1. Applicant’s Motion to Strike should be denied.

Motions to strike are not favored, and matter will not be stricken unless it clearly has no bearing upon the issues in the case. *See, e.g., Ohio State University v. Ohio University*, 51 USPQ2d 1289, 1293 (TTAB 1999); and *Harsco Corp. v. Electrical Sciences Inc.*, 9 USPQ2d 1570 (TTAB 1988). Matter attacked as impertinent or immaterial generally will not be stricken

unless it is clear that the allegations in question have no bearing on the issues in the case. *Ohio State University* at 1292. The primary purpose of pleadings under the Federal Rules of Civil Procedure is to give fair notice of the claims or defenses asserted, the Board may decline to strike even objectionable pleadings where their inclusion will not prejudice the adverse party, but rather will provide fuller notice of the basis for a claim or defense. *See, e.g., Order of Sons of Italy in America v. Profumi Fratelli Nostra AG*, 36 USPQ2d 1221, 1223 (TTAB 1995).

Here, Applicant has objected to the following

1. The use of the term “and related marks” from Paragraph 2.
2. The use of the term “and variations thereof” from Paragraph 3.
3. The use of the term “bones design” marks from Paragraph 4.
4. The use of the phrase “the trademarks incorporating the term BONES” from Paragraph 5.

First, Paragraph 2 of the Notice Opposition could not be more clear. The language in Paragraph 2 of the Notice of Opposition states:

*Opposer is the owner of various trademarks and trademark registrations for the mark BONES for a variety of goods and services and has exclusive rights to the mark BONES and certain BONES & Design marks, (collectively “Opposer’s Marks”), including the following registrations consisting of or incorporating the mark BONES:*

The Notice of Opposition then specifically lists 9 registrations for the mark BONES, some of which contain the word BONES with certain design features. In providing this detail, Opposer has placed Applicant on notice that Opposer owns rights to the mark BONES, both alone and in conjunction with certain designs. Opposer is also on notice in Paragraph 4, that Opposer uses various designs “*such as skulls with bones designs*” that appear both alone and in conjunction with the word BONES. The pleading makes Applicant aware that Opposer has

rights to the mark BONES as well as for marks that contain both the word BONES and design marks.

Next, Paragraph 3 specifically states that “*the public recognizes the mark BONES and variations thereof as signifying the goods and services offered by Opposer.*” There is no doubt that Applicant is aware that Opposer is claiming not only the right to the mark BONES, but also to various stylized iterations of the BONES marks and marks that contain BONES together with certain design features.

Finally, Paragraph 5 states:

*Notwithstanding Opposer’s exclusive prior rights in and to the trademarks incorporating the term BONES, Applicant, on October 6, 2010, filed an application to register the trademark JUST BONES BOARDWEAR & Design.*

There is simply nothing unclear about this paragraph. Obviously, Opposer claims exclusive prior rights to trademarks that incorporate the word BONES, including the list of marks set forth in Paragraph 2 and attached to the Notice of Opposition.

## 2. Motion for More Definite Statement

A motion for a more definite statement pursuant to Rule 12(e) of the Federal Rules of Civil Procedure, is appropriate only in those cases where the pleading states a claim upon which relief can be granted, but is so vague or ambiguous that the movant cannot make a responsive pleading in good faith or without prejudice to itself. Fed. R. Civ. P. 12(e). Such a motion is generally disfavored and should only be filed in those instances where a pleading is unintelligible and the moving party cannot frame a response. *See* TMEP § 505.01. So long as a pleading gives the adverse party fair notice of the asserted claims(s), a motion for a more definite statement normally will not be granted. *Id.*

There is nothing in the Notice of Opposition that is vague or ambiguous. A notice of opposition must include (1) a short and plain statement of the reason(s) why opposer believes it

would be damaged by the registration of the opposed mark and (2) a short and plain statement of one or more grounds for opposition. TBMP § 309.03(a)(2). The Notice of Opposition does exactly what is required under the rules. For all the reasons set forth above, both the Motion to Strike and the Motion for a More Definite Statement should be denied.

Respectfully submitted,

Dated: September 19, 2011

By:   
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**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that this correspondence is being transmitted by electronic mail to the United States Patent and Trademark Office via ESTTA with any required fees on the date identified below.

Dated: September 19, 2011

  
Kurt Koenig

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing **“RESPONSE TO APPLICANT’S MOTION TO STRIKE OR IN ALTERNATIVE MOTION FOR MORE DEFINITE STATEMENT”** was served on September 19, 2011 by first-class mail, postage prepaid, to Applicant’s counsel addressed as follows:

Melanie C. Holloway  
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4905 Dickens Road, Suite 100  
Richmond, VA 23230

Dated: September 19, 2011

  
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Kurt Koenig