

ESTTA Tracking number: **ESTTA491158**

Filing date: **08/27/2012**

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

Proceeding	91205878
Party	Plaintiff Dow Jones, L.P.
Correspondence Address	SUSAN PROGOFF DORSEY & WHITNEY LLP 51 WEST 52ND STREET NEW YORK, NY 10019-6119 UNITED STATES ny.trademark@dorsey.com
Submission	Motion to Strike
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Date	08/27/2012
Attachments	Motion Strike Answer 91205878.pdf (4 pages)(392688 bytes)

See also TBMP § 311.02. In providing an answer, the applicant “should not argue the merits of the allegations in a complaint but rather should state, as to each of the allegations contained in the complaint, that the allegation is either admitted or denied.” TBMP § 311.02(a). Applicant has failed to admit, deny, or even respond to the allegations contained in Opposer’s Notice of Opposition. Accordingly, Applicant’s Answer is unresponsive and insufficient, and its arguments should be stricken as immaterial. *See Thrifty Corp. v. Bomax Enterprises*, 228 U.S.P.Q. 62, 63 (T.T.A.B. 1985) (holding an answer that was “basically argumentative” was an unresponsive pleading and stating that applicant must answer notice of opposition’s numbered paragraphs by specifically admitting or denying the allegations in each one).

Count I of the Notice of Opposition alleges that registration of Applicant’s mark will violate Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), by creating a likelihood of confusion or deception. Specifically, the Notice of Opposition alleges that (a) Applicant’s trademark and service mark so resembles Opposer’s mark as to be likely to cause confusion or mistake or to deceive persons by creating the erroneous impression that Applicant’s goods and services originate with Opposer (§ 7); (b) Applicant’s adoption and use of her claimed mark THE DOGS STREET JOURNAL is without Opposer’s license, authorization and permission (§ 8); and (c) Opposer and its trademark and service mark THE WALL STREET JOURNAL would be damaged by the grant of a trademark registration to Applicant (§ 10). Applicant has failed to respond to any of these allegations.

Applicant also failed to respond to Count II, which alleges that Applicant’s mark THE DOGS STREET JOURNAL is likely to dilute Opposer’s famous mark THE WALL STREET JOURNAL in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c). In support of this claim, the Notice of Opposition alleges that (a) Opposer’s trademark and service mark is

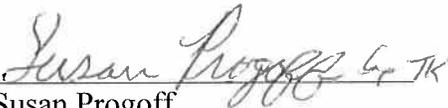
famous (¶ 12); (b) Applicant's proposed trademark is likely to dilute the distinctive quality of and tarnish Opposer's famous mark (¶ 13); and (c) the granting of a trademark registration to Applicant would violate or diminish Opposer's rights in its famous mark (¶ 14). Applicant has not responded to any of these allegations. Instead, Applicant claims that she "sees no way" that her website dilutes Opposer's mark. Her final plea is that the Board visit her Facebook page and make a decision in her favor. Applicant's responses do not respond to, admit, or deny any of the numbered paragraphs in the Notice of Opposition. Accordingly, Applicant's Answer does not comply with Rule 8(b), F.R.Civ. P., Trademark Rule 2.106(b)(1) or TBMP § 311.02(a) and should be stricken.

For the foregoing reasons, Opposer respectfully requests that the Board grant its motion and strike Applicant's answer.

Dated: August 27, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of August, 2012, a copy of the foregoing OPPOSER'S MOTION TO STRIKE ANSWER TO NOTICE OF OPPOSITION was served on Applicant by e-mail at pat.f.allen@gmail.com and by First Class Mail, postage pre-paid, addressed as follows:

Patricia Allen
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Thomas E. Kearney