

ESTTA Tracking number: **ESTTA535670**

Filing date: **05/01/2013**

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

|                        |   |
|------------------------|---|
| Proceeding             | 91206789  |
| Party                  | Plaintiff<br>BBK Tobacco & Foods, LLP   |
| Correspondence Address | MICHAEL SNEBERGER<br>BBK TOBACCO & FOODS LLP<br>3315 W BUCKEYE ROAD, SUITE B<br>PHOENIX, AZ 85009<br>UNITED STATES<br>legal@hbiin.com |
| Submission             | Motion to Strike  |
| Filer's Name           | Michael R. Sneberger  |
| Filer's e-mail         | legal@hbiin.com   |
| Signature              | /Michael R. Sneberger/  |
| Date                   | 05/01/2013  |
| Attachments            | 91206789 Motion to Strike Amended Answer 050213.pdf ( 2 pages )(51335 bytes )   |

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

BBK Tobacco & Foods, Inc. d/b/a  
HBI International

Opposer,

v.

Don Juan Gross

Applicant.

Opposition No. 91206789

Mark: SMOKE OF ART

Serial No. 85/588, 301

Application Filed: April 3, 2012

Published: August 21, 2012

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**MOTION TO STRIKE AMENDED ANSWER TO NOTICE OF OPPOSITION**

On August 30, 2012, BBK Tobacco & Foods, LLP d/b/a HBI International, filed an Notice of Opposition to the registration of the mark SMOKE OF ART shown in Application Serial No. 85/588301 by owner/applicant Don'Juan Gross. Gross filed his initial Answer to Notice of Opposition on September 5, 2012. Gross then filed an Amended Answer to Notice of Opposition on December 20, 2012.

Federal Rules of Civil Procedure, Rule 15(a)(2) commands that Gross could only Amend his answer with the Opposer's written consent or the Court's leave. Gross did not obtained Opposer's written consent, and made no motion for leave to amend therefore his Amended Answer to Notice of Opposition filed December 20, 2012 should be stricken.

Dated: May 2, 2012

By: 

Michael R. Sneberger, Esq.  
Attorney for Opposer  
telephone: 800-420-4372 ext: 207  
email: legal@hbiin.com

Certificate of Service

The undersigned hereby certifies that a copy of the foregoing Notice of Opposition has been served upon the Applicant's Correspondence address on May 2, 2013 by depositing same in the United States Mail, first-class mail, postage prepaid, in an envelope addressed as follows and by email to donjuangross@gmail.com:

**Don Juan Gross**  
**1951 S. Beverley Glen Blvd. Apt 1**  
**Los Angeles CA 90025**



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Michael R. Sneberger