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

Proceeding	91208141
Party	Plaintiff Goya Foods, Inc.
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Attachments	Reply Motion to Strike 8-13-13.pdf(61345 bytes)

subject application to rely on opposer's conduct as indicating its intention not to assert its rights.

None of the Applicant's newly alleged facts support a claim that Opposer engaged in misleading conduct. In fact, Applicant's alleged facts are unclear as to what misleading conduct allegedly occurred unless Applicant is merely referring to its ownership of registrations which the Board has previously stated are inapposite to the equitable defenses alleged by Applicant.

None of the Applicant's newly alleged facts support a claim that Applicant relied¹ on any assurances by Goya. In fact, Applicant's alleged facts are silent on what such assurances could have or may have been unless, again, Applicant is merely referring to its ownership of registrations which the Board has previously stated are inapposite to the equitable defenses alleged by Applicant.

The Applicant has simply alleged (1) ownership of two registrations for goods other than the goods in the application in issue, (2) that Goya took no action against those registrations, and (3) that Goya may have had prior knowledge of those registrations and/or use of the same on the goods recited in those registrations.

The Board, in its prior Decision stated that "[w]here, as in the present case, the goods in the subject application are not substantially similar to the goods claimed in the prior registration, neither *Morehouse* nor the narrow circumstances for use of laches applies." As such, Applicant's alleged reliance on Goya's alleged knowledge of Applicant's other registrations or its use of the same on other goods is irrelevant, incompetent and incapable of resulting in an estoppel. Further in that regard, *see, for*

¹ Certainly Applicant cannot be alleging reliance on Goya's mention of Applicant's registrations in a third party summary judgment motion that was filed by Goya over a year after Applicant filed the application in issue herein.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing OPPOSER'S REPLY TO APPLICANT'S RESPONSE TO OPPOSER'S MOTION TO STRIKE APPLICANT'S FIRST AND SECOND AFFIRMATIVE DEFENSES SET FORTH IN APPLICANT'S AMENDED ANSWER TO THE NOTICE OF OPPOSITION was sent to attorneys for Applicant this day by e-mail and first class mail, postage prepaid, to the following address:

Gregory Owen (gowen@owe.com)
Kathleen Letourneau (kel@owe.com)

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Dated: August 13, 2013

/John M. Rannells/

John M. Rannells