

ESTTA Tracking number: **ESTTA638908**

Filing date: **11/14/2014**

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

Proceeding	91210559
Party	Defendant East Coast Network Services, LLC
Correspondence Address	RUSSELL LOGAN 2735 WESTMINSTER RD ELLICOTT CITY, MD 21043-3599 UNITED STATES russell.logan@gmail.com
Submission	Motion to Strike
Filer's Name	Russell Logan
Filer's e-mail	russell.logan@gmail.com
Signature	/Russell Logan/
Date	11/14/2014
Attachments	Motion to Strike.pdf(214763 bytes)

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

NetCloud, LLC
Opposer

v.

East Coast Network Services, LLC
Applicant

Opposition No. 91210559

MOTION TO STRIKE EXHIBITS ATTACHED TO OPPOSER’S REPLY BRIEF¹

Applicant East Coast Network Services, LLC moves to strike Exhibits A, B, and C attached to Opposer’s Reply Brief.

If evidentiary matter not of record is attached to a brief on the case, an adverse party may object thereto by motion to strike. TBMP § 539 (2014). Opposer attempts to make of record its own Responses to Interrogatories, Responses to Requests for Documents, and Initial Disclosures by attaching them to its reply brief as Exhibits A, B, and C. Such exhibits were not made of record during Opposer’s trial period and constitute untimely evidence when submitted for the first time with Opposer’s reply brief.

Moreover, even if Opposer had timely submitted Exhibits A, B, and C they would still be inadmissible. With one exception not applicable here, responses to interrogatories may only be offered into evidence by the inquiring party, and initial disclosures may only be offered by the receiving party. 37 C.F.R § 2.120(j)(5), TBMP §§ 704.10, 704.14 (2014).

Further, requests for discovery, responses thereto, and disclosed documents should only be filed with the Board in five circumstances not applicable here: (1) with a motion related to discovery; (2) in support of or response to a motion for summary judgment; (3) under a notice of reliance during a party’s testimony period; (4) as exhibits to a testimony deposition; or (5) in support of an objection that evidence was not provided in response to a request for discovery. 37 C.F.R. § 2.120(j)(8); TBMP § 704.10 (2014).

¹ Applicant is aware that it is not permitted to file a reply brief and confines its arguments to those in support of its motion to strike.

Opposer's attempt to introduce into the record its own Responses to Interrogatories, Responses to Requests for Documents, and Initial Disclosures are therefore inappropriate notwithstanding their untimeliness.

Accordingly, Applicant requests that Exhibits A, B, and C be stricken from Opposer's reply brief.

Dated this 14th day of November, 2014.

/Russell Logan/
Russell Logan, Esquire
Attorney for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **MOTION TO STRIKE EXHIBITS ATTACHED TO OPPOSER'S REPLY BRIEF** has been served on NetCloud, LLC by emailing said copy on 11/14/2014, to Morris E. Turek, counsel for Opposer, at morris@yourtrademarkattorney.com.

/Russell Logan/
Russell Logan, Esquire
Attorney for Applicant