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

Proceeding	91210665
Party	Plaintiff Julius Sämann Ltd.
Correspondence Address	ROBERTA S BREN OBLON SPIVAK MCCLELLAND MAIER & NEUSTADT LLP 1940 DUKE STREET ALEXANDRIA, VA 22314 UNITED STATES tmdocket@oblon.com, rbren@oblon.com, bchapman@oblon.com, ndyson@oblon.com, clisenby@oblon.com
Submission	Motion to Strike
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Date	07/02/2013
Attachments	91210665-Motion to Strike.pdf(125143 bytes)

(CCPA 1969); and *Edom Laboratories Inc. v. Lichter*, 102 USPQ2d 1546, 1549 footnote 6 (TTAB 2012).

Applicant's Sixth Affirmative Defense

Applicant's Sixth Affirmative Defense consists of an inappropriate and insufficient pleading of laches and an insufficient pleading of "acquiescence and estoppel."

The laches defense does not apply in this case because laches begins to run in an opposition proceeding from the time the application was published for opposition. *National Cable Television Association Inc. v. American Cinema Editors Inc.*, 937 F.2d 1572, 19 USPQ2d 1424, 1432 (Fed. Cir. 1991); and *Panda Travel Inc. v. Resort Option Enterprises Inc.*, 94 USPQ2d 1789, 1797 footnote 5 (TTAB 2009).

In this case, Applicant's "InstaLink" application was published for opposition on February 26, 2013. Opposer timely requested a 90-day Extension of Time to Oppose, which was granted by Board order on March 29, 2013. Opposer timely filed its Notice of Opposition on May 16, 2013.

Regarding Applicant's asserted affirmative defenses of "acquiescence and estoppel" (as well as "laches"), the elements of each affirmative defense should be set forth and "should include enough detail to give the plaintiff fair notice of the basis for the defense." TBMP §311.02(b) (June 2013).

Applicant's Application Serial No. 85/724,027 covering goods in Class 5 and services in Class 35 was filed and was published for opposition based on Section 1(b) of the Trademark Act, 15 USC §1051(b). The Opposition involves only Applicant's Class 5 goods. Applicant's affirmative defenses of "acquiescence and estoppel" (as well as laches) do not set forth the elements of these affirmative defenses in relation to Applicant's Class 5 goods. Also, these affirmative defenses do not include supporting facts. Thus, Applicant's "acquiescence and

estoppel” (as well as laches) affirmative defenses do not include sufficient detail to give Opposer fair notice of the basis for each defense to the opposition against Applicant’s Class 5 goods.

It is clear that Applicant’s pleaded affirmative defenses of laches, acquiescence and estoppel are insufficient under the law. See TBMP §506.01 (June 2013).

II. Request for Suspension of Opposition Proceeding

Inasmuch as Opposer’s Motion to Strike involves whether some of Applicant’s affirmative defenses will remain in the Opposition proceeding, it is requested that the Opposition be suspended pending the Board’s decision on Opposer’s Motion to Strike. It is impractical for the parties to go forward with the case, when the pleadings are not yet finalized. Trademark Rule 2.117.

Wherefore, Julius Sämann Ltd. respectfully requests that Brand Builders Group Inc.’s Fifth and Sixth Affirmative Defenses, filed with its Answer on June 24, 2013, be stricken in their entirety. Julius Sämann Ltd. also respectfully requests that the Opposition proceeding be suspended pending a decision on the Motion to Strike.

Respectfully submitted,

JULIUS SÄMANN LTD.

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Dated: July 2, 2013

RSB/BAC/cli {8630742_1.DOC}

Counsel for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing OPPOSER'S MOTION TO STRIKE APPLICANT'S FIFTH AND SIXTH AFFIRMATIVE DEFENSES AND TO SUSPEND was served on Applicant at Applicant's address as listed in the records of the United States Patent and Trademark Office this 2nd day of July, 2013, by sending same, via First Class mail, postage prepaid, to:

Andrew B. Ziegler
BRAND BUILDERS GROUP INC.
754 Rolling Hill Drive
River Vale, NJ 07675-6167

and via First Class mail, postage prepaid, to the "Filer" of Applicant's "Answer" to the address listed thereon, as filed with the Board:

G. Kevin Townsend
8612 Hidden Hill Lane
Potomac, MD 20854


