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

Proceeding	91212931
Party	Plaintiff McDonald's Corporation
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Date	12/10/2013
Attachments	Reply_in_Support_of_Motion_to_Strike_EGG_WHITE_DELIGHT.pdf(11124 bytes)

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

McDONALD'S CORPORATION,

Opposer,

GREGG DONNENFELD,

Applicant.

Mark: EGG WHITE DELIGHT

Opposition No. 91212931

Serial No. 85/877,499

**REPLY IN SUPPORT OF OPPOSER'S MOTION TO STRIKE
APPLICANT'S AFFIRMATIVE DEFENSES**

In his response to Opposer's Motion to Strike, Applicant correctly cites the standard for pleading affirmative defenses, but misapplies it to his purported affirmative defenses. The Board draws a distinction between affirmative defenses that "state the reasons for" – that is, explain or provide additional support for an applicant's denials – which are appropriate, versus mere restatements of those denials, which should be stricken. TBMP § 311.02(d); *see also Order of Sons of Italy in America v. Profumi Fratelli Nostra AG*, 36 USPQ2d 1221, 1223 (TTAB 1995) (distinguishing between a mere denial and an amplification); *Blackhorse v. Pro Football Inc.*, 98 USPQ2d 1633, 1637-1638 (TTAB 2011) (applicant's allegation that "Petitioners lack standing to seek cancellation of Registrant's registered mark" was stricken; whereas allegation that the mark had acquired secondary meaning was an "elaboration" of denial and, thus, a legitimate amplification). Here, Applicant's affirmative defenses – that Applicant has priority (¶¶14-15) and that Opposer has no rights in its mark and thus lacks standing for this Opposition (¶¶16-17) – provide no additional explanation or facts in favor of his earlier denials and, therefore, are inappropriate and should be stricken.

WHEREFORE, McDonald's Corporation respectfully requests that the Board:

(1) enter an Order granting its Motion and striking each of Applicant's affirmative defenses; and

(2) grant McDonald's Corporation any such additional and further relief that the Board deems proper.

Date: December 10, 2013

Respectfully submitted,

By: /Michael G. Kelber/
One of the Attorneys for Opposer
McDonald's Corporation

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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **REPLY IN SUPPORT OF OPPOSER'S MOTION TO STRIKE APPLICANT'S AFFIRMATIVE DEFENSES** upon:

Gregg Donnenfeld
6 Wren Drive
Roslyn, New York 11576-2722

by depositing said copy in a properly addressed envelope, First Class postage prepaid, and depositing same in the United States mail at Two North LaSalle Street, Chicago, Illinois, on the date noted below:

Date: December 10, 2013

By: /Jessica E. Cohen/
One of the Attorneys for Opposer,
McDonald's Corporation