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

Proceeding	91213584
Party	Plaintiff Jaguar Land Rover Limited
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Date	06/04/2015
Attachments	Opposer's Response to Late Payment of Fee.pdf(35069 bytes )

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

JAGUAR LAND ROVER LIMITED,	)	Opposition No. 91213584
	)	
Opposer,	)	
	)	Serial No. 85867803
v.	)	
	)	
TOYS TEKK CORPORATION,	)	
	)	
	)	
Applicant.	)	

**OPPOSER’S RESPONSE TO APPLICANT’S LATE PAYMENT OF FEE**

On May 18, 2015, Applicant Toys Tekk Corporation, through its counsel, sent a fax to the Finance Department of the United States Patent and Trademark Office ostensibly submitting a fee for Applicant’s “Counterclaim against Registration No. 2100825,” Opposer Jaguar Land Rover Ltd.’s registration for its RANGE ROVER trademark (the ‘825 registration). Applicant did not serve Opposer with a copy of its submission; rather Opposer only learned about the submission during a review of the PTO online records.

It is not clear what mechanism Applicant is trying to use to commence a claim against Opposer’s registration, but to the extent that the Board treats it as a motion, Opposer hereby opposes same.

Applicant initially attempted to file a counterclaim for cancellation of the ‘825 registration on December 23, 2013. On January 30, 2014, the Board issued an Order dismissing this counterclaim on the basis of Applicant’s nonpayment of the requisite fee. Now, nearly 16 months later, following the close of the discovery period, and without any excuse or argument,

Applicant is for the first time attempting to remedy its failure to commence a cancellation proceeding against the '825 registration.

The TBMP sets out the standard for amending or adding a counterclaim. In particular, TBMP 507.02(b) states that “if the grounds for the counterclaim are known to the defendant when its answer to the complaint is filed, the counterclaim should be pleaded with or as part of an answer.” Here, there can be no question that Applicant knew of the grounds for its counterclaim at the time of its answer. Indeed, Applicant’s answer included a cancellation counterclaim for the ‘825 registration. Applicant’s late attempt to add this counterclaim is thus untimely.

Applicant’s sole excuse for its failure to raise this counterclaim earlier is that “Opposer did not raise [that the Board had dismissed the counterclaim].” Opposer can only conclude that Applicant failed to read the Board’s January 30, 2014 Order and is now trying to blame Opposer for this failure. All parties, however, are expected to read Board orders, and Applicant’s attempt to shift this burden to Opposer is, at best, misplaced.

Applicant has no excuse for its failure to amend its counterclaims in a time fashion. *See* TBMP § 507. Accordingly, Opposer respectfully requests that Applicant’s request be denied.

Respectfully submitted,

By: 

Jennifer K. Ziegler  
Chanille Carswell  
Rebecca J. Cantor

*Attorneys/Agents for Opposer*

Date: June 4, 2015

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**CERTIFICATE OF SERVICE**

I certify that I served:

**OPPOSER'S RESPONSE TO APPLICANT'S LATE PAYMENT OF FEE**

On June 4, 2015 by First Class Mail to:

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*Correspondent for Applicant*

By:   
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