

ESTTA Tracking number: **ESTTA717192**

Filing date: **12/29/2015**

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

Proceeding	91214449
Party	Plaintiff Omega SA (Omega AG) (Omega Ltd.)
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Signature	/Oren Gelber/
Date	12/29/2015
Attachments	P890 Opposition to Applicant's Notice of Supplemental Authority.pdf(169269 bytes )

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

OMEGA S.A. (OMEGA AG)  
(OMEGA LTD.),

Opposer,

v.

ALPHA OMEGA EPSILON, INC.,  
Applicant.

Mark: AΩE  
Opp. No.: 91214449 (Parent)  
Serial No.: 85855823

OMEGA S.A. (OMEGA AG)  
(OMEGA LTD.),

Opposer,

v.

ALPHA OMEGA EPSILON, INC.,  
Applicant.

Mark: ALPHA OMEGA EPSILON  
Opp. No.: 91214454 (Child)  
Serial No.: 85855839

OMEGA S.A. (OMEGA AG)  
(OMEGA LTD.),

Opposer,

v.

ALPHA OMEGA EPSILON, INC.,  
Applicant.

Mark: ALPHA OMEGA EPSILON &  
Design  
Opp. No.: 91214452 (Child)  
Serial No.: 85857062

OMEGA S.A. (OMEGA AG)  
(OMEGA LTD.),

Opposer,

v.

ALPHA OMEGA EPSILON, INC.,  
Applicant.

Mark: ALPHA OMEGA EPSILON  
Opp. No.: 91214453 (Child)  
Serial No.: 85857065

**OPPOSER'S OPPOSITION TO APPLICANT'S NOTICE OF  
SUPPLEMENTAL LEGAL AUTHORITY**

I. Applicant's Submission Should be Stricken as an Impermissible Surreply

Surreply briefs are impermissible in proceedings before the Board, pursuant to TBMP § 502.02(b). *See also* 37 CFR § 2.127(a), (e)(1); *Pioneer Kabushiki Kaisha v. Hitachi High Technologies*, 73 USPQ2d 1672, 1677 (TTAB 2005) (because 37 CFR§ 2.127(a) prohibits the filing of surreply briefs, opposer's surreply to applicant's motion was not considered); *No Fear Inc. v. Rule*, 54 USPQ2d 1551, 1553 (TTAB 2000). To the extent that Applicant presents new arguments in its submission regarding the applicability of the Federal Circuit's decision, as opposed to simply bringing the decision to the Board's attention, it constitutes a surreply in support of its Motion for Summary Judgment (D.E. 7). As a result, Applicant's December 9, 2015 submission (D.E. 27) should be stricken and given no consideration.

II. Applicant's Notice of Supplemental Legal Authority is Untimely

The briefing on Applicant's pending Motion for Summary judgment was completed on August 10, 2015. The Federal Circuit's decision in *Jack Wolfskin Ausrustung Fur Draussen GmbH & Co. KGGA v. New Millennium Sports S.L.U* was issued on August 19, 2015. Now, almost four months later, Applicant comes forth with this "relevant" case law. Consistent with the Board's prohibition of surreplies, there must be an end to briefing at some point. Applicant cannot submit a notice of supplemental authority every time it comes across a case which contains a phrase which it thinks might support a point in its pending motion. This is particularly true, where, as here, the authority neither addresses any new point of law nor represents any change in existing law.

III. Applicant's Supplemental Legal Authority Does Not Present Any New Points of Law

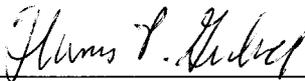
Applicant's Notice of Supplemental Legal Authority is unnecessary and should be given no consideration because the case to which Applicant cites does not present any new or novel point of law that may inform the Board's decision in the pending motion for summary judgment. Applicant cites to *Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGGA v. New Millennium Sports S.L.U.*, 797 F.3d 1363 (Fed. Cir. 2015), for three points. See D.E.27 . These points, among many others, are merely considerations in the fact intensive inquiry in the likelihood of confusion analysis. These are not new considerations. As established by the *Jack Wolfskin* case, these points have been considered in existing authority that was readily available to Applicant during the initial summary judgment briefing and the supplemental briefing. See *Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGGA v. New Millennium Sports S.L.U.*, 797 F.3d 1363 (Fed. Cir. 2015) citing to *In re Viterra Inc.*, 671 F.3d 1358, 1362 (Fed. Cir. 2012); *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1373 (Fed. Cir. 2005); and *Juice Generation, Inc. v. GS Enterprises LLC*, 794 F.3d 1334, 1338 (Fed. Cir. 2015) (quoting *Standard Brands, Inc. v. RJR Foods, Inc.*, 192 U.S.P.Q. 383 (TTAB 1976)).

IV. Applicant Mischaracterizes the Federal Circuit's Decision in *Jack Wolfskin*

Applicant's Notice includes excerpts from the *Jack Wolfskin* opinion that do not accurately reflect the Court's holding. For example, Applicant's Notice includes a quote pertaining to the Board's error in failing to compare the marks as a whole. D.E. 27 at 1 (citing *Jack Wolfskin*, 797 F.3d at 1366). Applicant fails to mention that the Federal Circuit also states "more or less weight [may be] given to a particular feature of the mark." *Jack Wolfskin*, 797 F.3d

at 1371. The Court's decision is an explicit recognition that certain components of a mark may be given heightened consideration for appropriate reasons, so long as all components and the marks in their entirety are accounted for in the analysis. *Id.*

Respectfully Submitted,

By: 

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Date: December 29, 2015  
JMC/TPG/OG/KAM

SHOULD ANY OTHER FEE BE REQUIRED, THE PATENT AND TRADEMARK OFFICE IS HEREBY REQUESTED TO CHARGE SUCH FEE TO OUR DEPOSIT ACCOUNT 03-2465.

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING FILED THROUGH THE ELECTRONIC SYSTEM FOR TRADEMARK TRIAL AND APPEALS IN THE UNITED STATES PATENT AND TRADEMARK OFFICE.

COLLEN *IP*

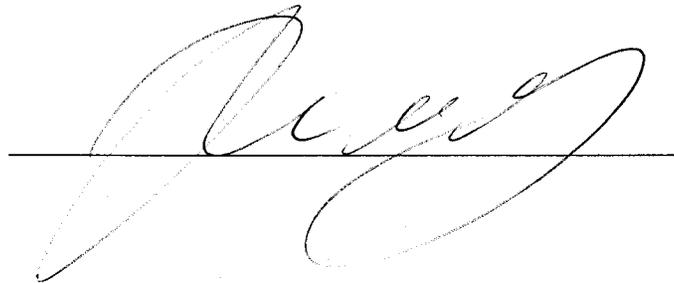
By:  Date: December 29, 2015

**CERTIFICATE OF SERVICE**

I, Nicole M. Kelly, hereby certify that a copy of the foregoing **Opposer's Opposition to Applicant's Notice Of Supplemental Legal Authority** was served by First Class U.S. Mail, postage prepaid on this 29th Day of December, 2015 upon

Jack A. Wheat  
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A handwritten signature in black ink, appearing to read "Jack A. Wheat", is written over a horizontal line.