

ESTTA Tracking number: **ESTTA632414**

Filing date: **10/13/2014**

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

Proceeding	91217952
Party	Plaintiff Imagewear Apparel Corp.
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Submission	Motion to Strike
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Signature	/Paul J. Kennedy/
Date	10/13/2014
Attachments	10-13-2014 Motion to Strike (Imagewear v. Staves).pdf(78893 bytes)

2. Opposer filed on or about August 19, 2014, a Notice of Opposition against registration of Applicant's Mark premised upon, among other things, Opposer's several federal trademark registrations and pending applications that pre-date Applicant's Application and/or use, with a result of a likelihood of confusion, as well as Applicant's lack of a *bona fide* intent to use Applicant's Mark in United States commerce on or in connection with the goods identified in the Application.

3. On or about September 17, 2014, Applicant filed its purported response to the Notice of Opposition (the "Response").

4. Applicant's Response is not an answer but, instead, a recitation of the claims of the opposition and statements that neither admit nor deny the averments, in violation of 37 C.F.R. § 2.106(b)(1) which requires that an applicant set forth its defenses to each of the claims asserted and shall admit or deny the "averments upon which the opposer relies." Applicant's Response does not do this. Applicant fails to address nine numbered paragraphs of the Notice of Opposition. Instead, Applicant's Response is replete with announcements and conclusions, which is not acceptable.

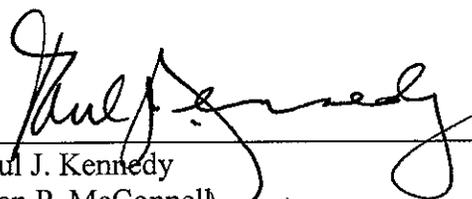
5. Section 311.02(a) of the Trademark Trial and Appeal Board Manual of Procedure ("TBMP") requires that:

"The defendant should not argue the merits of the allegations in a complaint but rather should state, as to each of the allegations contained in the complaint, that the allegation is either admitted or denied...If the complaint consists of numbered paragraphs setting forth the basis of plaintiff's claim of damage, the defendant's admissions or denials should be made in numbered paragraphs corresponding to the numbered paragraphs in the complaint."

6. Applicant has failed to comply with the TBMP, leaving Opposer to attempt to gather what averments of the Notice of Opposition may have been admitted or denied. This is not sufficient notice as to the issues in dispute in order to begin proceeding with the discovery process and ultimate trial on the merits. Section 506.01 of the TBMP permits a motion to strike in the “case of redundant, immaterial, impertinent, or scandalous matter.” Clearly, Applicant’s pronouncements and failure to respond to the numbered averments of the Notice of Opposition is non-responsive to the Notice of Opposition and should be stricken.

WHEREFORE, Opposer respectfully requests that Applicant’s Response be stricken.

Respectfully submitted,



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DATE: October 13, 2014

*Attorneys for Opposer,
Imagewear Apparel Corp.*

CERTIFICATE OF SERVICE

I, Paul J. Kennedy, hereby certify that on October 13, 2014, a true and correct copy of the foregoing Opposer's Motion to Strike Applicant's Response to Notice of Opposition was served via electronic mail (ogpublishing@yahoo.com) and by U.S. First Class Mail, postage prepaid, upon the following:

Fredrick J. Staves
OG Publishing & Apparel
P.O. Box 211
Rialto, CA 92377-0211

Applicant/Correspondent for Applicant


Paul J. Kennedy