

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: July 15, 2015

Opposition No. 91218431 (Parent)
Cancellation No. 92059996

Double Down, Inc.

v.

IGT

Cancellation No. 92060105

IGT

v.

Double Down, Inc.

**George C. Pologeorgis,
Interlocutory Attorney:**

On July 10, 2015, IGT filed a motion for summary judgment solely in regard to Cancellation No. 92059996 of this consolidated case on its asserted affirmative defense of laches.

Affirmative defenses, like claims in a petition for cancellation, must be supported by enough factual background and detail to fairly place the petitioner on notice of the basis for the defenses. *See IdeasOne Inc. v. Nationwide Better Health Inc.*, 89 USPQ2d 1952, 1953 (TTAB 2009); *Ohio State Univ. v. Ohio Univ.*, 51 USPQ2d 1289, 1292 (TTAB 1999) (primary purpose of pleadings “is to give fair notice of the claims or defenses asserted”). A party must allege sufficient facts

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beyond a tender of ‘naked assertion[s]’ devoid of “further factual enhancement,’ to support its claims. *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009), quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

Following a careful review of IGT’s answer to the petition to cancel in Cancellation No. 92059996, the Board notes that IGT merely alleges “naked assertions” that the petition is barred in whole or in part by the doctrines of laches, estoppel, and/or acquiescence. In view thereof, the Board finds that these aforementioned affirmative defenses are deficiently pleaded because the facts constituting each defense have not been alleged.¹

Moreover, the Board notes that a party may not move for summary judgment on a deficiently pleaded defense. *Cf. Asian Western Classics B.V. v. Selkow*, 92 USPQ2d 1478 (TTAB 2009).

In view of the foregoing, IGT’s affirmative defenses of laches, estoppel, acquiescence, and unclean hands are hereby stricken from IGT’s answer to the petition to cancel in Cancellation No. 92059996 and, therefore, IGT’s motion for

¹ The Board further notes that IGT also alleges the affirmative defense of unclean hands without any factual allegations to support this defense in its answer to the petition to cancel in Cancellation No. 92059996. Accordingly, the Board finds that IGT’s affirmative defense of unclean hands is also deficiently pleaded. The Board additionally notes that IGT, in its answer to the petition to cancel in Cancellation No. 92059996, has asserted the defense that Double Down’s petition to cancel fails to state a claim upon which relief may be granted. The Board notes that this asserted defense is not a true affirmative defense because it relates to an assertion of the insufficiency of the pleading of Double Down Inc.’s petition to cancel rather than a statement of a defense to a properly pleaded claim. In view thereof, this asserted defense will not be considered as such. *See Hornblower & Weeks Inc. v. Hornblower & Weeks Inc.*, 60 USPQ2d 1733, 1738 n.7 (TTAB 2001). Nonetheless, after a care review of Double Down, Inc.’s petition to cancel, the Board finds that Double Down, Inc.’s pleading is legally sufficient to the extent that it clearly contains allegations which, if proven, would establish Double Down, Inc.’s standing, as well as its asserted claim of likelihood of confusion. Accordingly, IGT’s defense of failure to state a claim is stricken from its answer to the petition to cancel in Cancellation No. 92059996.

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summary judgment will be given no further consideration. Notwithstanding, IGT may move to amend its answer in Cancellation No. 92059996 to assert sufficient factual allegations with respect to any possible laches, estoppel, acquiescence, and/or unclean hands defenses.

Trial dates for this consolidated case remain as reset by Board order dated March 25, 2015 as issued in the parent case of this consolidated proceeding, i.e., Opposition No. 91218431.