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

Proceeding	91220182
Party	Plaintiff Beats Electronics, LLC
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

BEATS ELECTRONICS, LLC

Opposer,

v.

BETASAVERS LLC,

Applicant.

Opposition No. 91220182

OPPOSER’S MOTION TO STRIKE

Opposer Beats Electronics, LLC (“Beats”), pursuant to Federal Rule of Civil Procedure 12(f) and TBMP §506, hereby moves this Board for an order striking Applicant’s non-responsive Answer which does not directly admit or deny a single allegation of Beats’ Notice of Opposition and serves only to unnecessarily clutter the case and increase the expense of discovery.

I. BACKGROUND

On January 14, 2015, Beats initiated this proceeding against Applicant, opposing Applicant’s U.S. App. No. 8/255,084 for the mark  based on an intent to use the mark in connection with “on-line retail store services featuring clothing and accessories, household items, personal care products, consumer electronics” in International Class 35, on the grounds that Applicant’s use of the marks is likely to cause confusion with and dilute Opposer’s “b” logo marks. On February 5, 2015, Applicant filed its Answer (attached hereto as Exhibit A), which fails to respond to any of the specific allegations contained in Beats’ Notice of Opposition. As Applicant failed to serve a copy of the Answer on Opposer as required by Trademark Rule 2.119(a), Beats first learned of Applicant’s response by the Board’s February 13, 2015 order. Accordingly, this Motion to Strike is timely filed.

II. APPLICANT'S NON-RESPONSIVE ANSWER SHOULD BE STRICKEN

Applicant's Answer does not directly admit or deny a single allegation of Beats' Notice of Opposition. Rather, Applicant's Answer merely restates reasons why its application should proceed to register, which confuses the issues in this proceeding and fills the case with unnecessary clutter. Accordingly, Applicant's Answer should be stricken.

The Trademark Rules of Practice require that, in short and plain terms, "[a]n answer . . . shall admit or deny the averments upon which the opposer relies." 37 CFR § 2.106(b)(1); Fed. R. Civ. P. 8(b); TMBP § 311.02. Alternatively, an answer that fails to respond to the allegations in the notice of opposition should be stricken as unnecessary clutter. *See 5A Wright and Miller* § 1381 at 665 (material set forth in an answer "that might confuse the issues in the case and would not, under the facts alleged, constitute a valid defense to the action can and should be deleted."); *see also United States v. Fairchild Indus., Inc.*, 766 F. Supp. 405, 408 (D. Md. 1991) ("[when] motions to strike remove unnecessary clutter from the case, they serve to expedite, not delay").

Moreover, an answer should not argue the merits of the allegations in a pleading but instead should state that each allegation is either admitted or denied. TMBP § 311.02. Applicant's Answer fails to do that. Rather than admitting or denying Beats' claims, as required by the Federal Rules of Civil Procedure and the Trademark Rules, in its Answer, Applicant makes factual allegations and conclusions of law unrelated to Beats' allegations, merely arguing the merits of Beats' claims. Such non-responsive argument is inappropriate matter for an answer and, as such, should be stricken as unnecessary clutter. *Fairchild*, 766 F. Supp. at 408.

Rather than answering to Beats' allegations, Applicant instead provides "reasons why Beats' opposition is considered invalid" and "insists that [Applicant's] registration request should be considered a favorable condition that this application be approved (sic)." (Answer, Ex. A). In doing so, Applicant confuses the issues in this proceeding and makes factual allegations

that are non-responsive to Beats' claims, because its responses do not directly admit or deny a single allegation. For example, in response to Paragraph 2 of Beats' Notice of Opposition, which explains the types of goods Beats offers under its "b" logo marks, rather than simply admitting or denying Beats' allegations, Applicant's Answer provides:

BETASAVERS LLC has both slogan (BETA IS BETTER! – already approved with Serial No. 86256069) and logo ( - pending to be approved with Application No. 86255084). Both slogan and logo are needed to boost the quality of our services as our notable costumers have become accustomed to seeing and recognizing slogan and mark. Fans and customers purchasing from our website are already using the stylized mark to recognize our business.

(Answer at 2, Ex. A). Not only does such response fail to admit or deny the allegations contained in the Notice of Opposition, but it alleges non-responsive matter, which contravenes Rule 8 of the Federal Rules of Civil Procedure and the Trademark Rules of Practice.

Similarly, Paragraph 13 of Beats' Notice of Opposition states that "Applicant's advertising and use of Applicant's Mark as contemplated in the Application will inevitably reach the same consumers that Beats targets with the use of its b Logo Mark." In response, Applicant's Answer provides:

BETASAVERS LLC mark logo is never similar to the to opposer mark. Therefore it will not cause any confusion or mistake to various customers or fans. Costumers will not mistaken our mark logo since our stylized mark consists of a human hand, finger pointing gesture (Humans forming letters/punctuation), which cannot be found on the opposer mark logo. BETASAVERS LLC humbly insist that the registration requested should be considered a favorable condition and that this application be approved.

(Answer at 13, Ex. A). Again, Applicant fails to address Opposer's allegations – directed to the commonality of the parties' consumers – but rather makes non-responsive factual allegations, which are inappropriate matter for an answer. TMBP § 311.02. This response is far from the "short and plain" answer required by Rule 8(b) and the Trademark Rules of Practice. Because this response fails to address the allegation that the parties' consumers are the same, this

response only confuses the issues in the case, does not constitute a valid defense, and should be stricken. *Fairchild Indus., Inc.*, 766 F. Supp. at 408.

Indeed, not one of the allegations in Applicant's Answer directly responds to, admits or denies Beats' claims. Rather, all of the allegations in Applicant's Answer either request that the Application be approved for registration, explain Applicant's business and purported reputation, or allege that Applicant's and Beats' marks are not similar. As such, the way the Answer is written, it is nearly impossible to line up Beats' allegations against Applicant's position and makes identifying the facts and allegations in this dispute nearly impossible. Accordingly, except for the denials that the marks at issue are not similar, the remainder of Applicant's responses to Beats' Notice of Opposition are non-responsive and argumentative and should be stricken.

III. APPLICANT'S FAILURE TO DENY SHOULD BE DEEMED AN ADMISSION

The Trademark Rules of Practice provide that an answer that fails to deny an allegation may be deemed an admission. Fed. R. Civ. P. 8(b); TBMP § 311.02(a). Here, Applicant notably fails to deny any of the allegations contained in the Notice of Opposition, and its Answer should therefore be deemed an admission of those allegations. *Cutino v. Nightlife Media, Inc.*, 575 Fed. Appx. 888 (Fed. Cir. 2014) (an answer that fails to deny a portion of an allegation is deemed admitted as to that portion).

Not only does Applicant's Answer fail to respond to Paragraphs 7-12 of Beats' Notice of Opposition in their entirety, but, as explained above, its responses to Paragraphs 1-6 and 13-19 are devoid of any specific denials. Accordingly, as a result of Applicant's failure to deny any of the allegations contained in the Notice of Opposition, its Answer should therefore be deemed an admission of those allegation.

IV. CONCLUSION

In sum, the non-responsive, argumentative Answer presented by Applicant will only complicate these proceedings. If Applicant's Answer is permitted to stand, Beats will be forced to serve numerous discovery requests and dedicate substantial deposition time, not only to discover the basis of Applicant's claims and defenses, but also to prepare Beats' responses to those allegations. Granting the present motion will, therefore, serve the interests of the parties and the Board by removing irrelevant and unnecessary issues from the proceeding and allow this case to move forward in an efficient and focused manner.

WHEREFORE, Opposer respectfully requests that the Board enter an Order granting its Motion and:

1. Striking Applicant's non-responsive Answer;
2. Or, in the alternative, deem the allegations of the Notice of Opposition admitted;
3. Granting Beats any such additional and further relief that the Board deems proper.

Respectfully submitted,

Date: March 6, 2015

By: /Michael G. Kelber/
One of the Attorneys for Opposer,
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CERTIFICATE OF SERVICE

I, Andrea S. Fuelleman, an attorney, state that, pursuant to 37 CFR § 2.119, I caused a copy of the foregoing Motion to Strike to be served upon:

Mr. Adegbayi Adefalajo
Betasavers LLC
60 E. Rio Salado Parkway, Suite 900
Tempe, AZ 85281-9126

via first class U.S. mail on March 6, 2015.

/Andrea S. Fuelleman/
Andrea S. Fuelleman

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