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

Proceeding	91225628
Party	Defendant Tencent Holdings Limited
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

TENCENT HOLDINGS LIMITED,)	
)	
Opposer,)	Opposition No. 91207516
v.)	(Parent Case)
DELSON GROUP, INC.,)	
)	
Applicant.)	
_____)	
DELSON GROUP, INC.,)	Opposition Nos. 91215611, 91225628 and
)	91225630
Opposer,)	
v.)	Application Serial Nos. 86633476 and
TENCENT HOLDINGS LIMITED,)	86633487
)	
Applicant.)	
_____)	

TENCENT’S MOTION TO STRIKE

Applicant Tencent Holdings Limited (“Tencent” or “THL”) hereby moves, pursuant to Federal Rule of Civil Procedure 12(f) and Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) § 506, to strike immaterial and impertinent allegations from the Amended Notices of Opposition in proceeding nos. 91225628 and 91225630 (together, the “Notices”) filed by Delson Group, Inc. (“Delson”).

I. THE PARTIES

By way of background, Tencent is one of the largest Internet companies in the world and provides services in many countries. As of December 31, 2015, Tencent had over 30,000 employees. Tencent’s principal place of business is in Shenzhen, China.

Delson alleges that it is in the business of organizing international technology conferences and conducting research, development and consulting related to mobile and wireless technologies and related products and services. Notices at ¶ 2.

II. BACKGROUND

On February 25, 2016, Delson filed the Notices, opposing application serial no. 86633476 (proceeding no. 91225628) and application serial no. 86633487 (proceeding no. 91225630), both for the mark TENCENT. The Notices allege a likelihood of confusion pursuant to Section 2(d) of the Trademark Act and a false connection pursuant to Section 2(a) of the Trademark Act and are based on rights that Delson allegedly established through its use of the mark TENCENT. Significantly, both Notices contain the following paragraphs, which consist of immaterial and impertinent allegations:

10. On information and believe, THL's central and main data centers or servers for its Goods/Services of TENCENT have been fully open to, accessible by, and/or controlled by, a foreign government as of its filing date of THL's Application, for whatever reasons.

11. On information and belief, THL's central and main data centers or servers for its Goods/Services of THL's other trademark applications or registrations, including Serial Numbers 85455432, 85876114, 85767185, 85980053, 85687478, 85725040, 85888910, 85455475, etc. were fully open to, accessible by, and/or controlled by, a foreign government as of the filing dates of THL's applications, for whatever reasons.

12. On information and belief, even though THL had Goods/Services of TENCENT in the U.S. market, it did not have U.S. export control permits required by U.S. laws before exporting technologies and information of related Goods/Services to certain countries including China, as of the filing date of THL's Application.

16. In the consolidated proceeding No. 91207516, THL is in open contempt of the Board order to produce its U.S. Export Control Permit to export technology and information to its China headquarter. Also, THL is in open contempt of the Board order to admit its main server and central datacenter in China for U.S. national security concern, but with related services in U.S. markets by American citizens.

18. THL's chairman, founder and CEO Ma Huateng made false statement, declaration and non-U.S. use specimen before USPTO in order to obtain registration for THL's marks (Exhibit 3).

19. On information and belief, THL was involved in threatening Prof. Willie Lu, a former member of U.S. federal FCC Technological Advisory Council and member of U.S. delegation for ITU mission, etc., and his family on his investigating THL's MAIN SERVER in China (with related services in U.S. markets by American citizens, such as THL's Wechat and Weixin services with American citizens but with MAIN servers or CENTRAL datacenters in China) for U.S. national security concern and U.S. homeland security protection.

20. In the consolidated proceeding No. 91207516, THL, one of the largest internet companies in CHINA with assets over US\$200B, tried to use the lengthy and expensive TTAB proceedings including motions and requests, etc. as a weapon, to financially attack and harass American small business like Delson and American Inventor like Prof. Willie W. Lu.

For the reasons set forth below, the Board should strike these allegations from the Notices.

III. DISCUSSION

TBMP § 506 provides that "Upon motion, or upon its own initiative, the Board may order stricken from a pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." An allegation is "impertinent" or "immaterial" when it is not "relevant to the issues involved in the action." 2-12 Moore's Federal Practice - Civil § 12.37 (2015). To prevail on a motion to strike, the movant must show that the challenged matter "has no bearing on the subject matter of the litigation and that its inclusion will prejudice the defendants." *Id.*; see Yukiyo, Ltd. v. Watanabe, 111 F.3d 883, 886, 42 U.S.P.Q.2D 1474 (Fed. Cir. 1997) (granting motion to strike where matter prejudiced moving party).

Courts have held that the burden of additional discovery due to irrelevant allegations creates prejudice to justify granting a motion to strike. See, e.g., Hernandez v. Dutch Goose, Inc., No. C 13-03537 LB, 2013 WL 5781476, at *5 (N.D. Cal. Oct. 25, 2013) ("the obligation to

conduct expensive and potentially unnecessary and irrelevant discovery is prejudice”); Bonshahi v. Fedex Corp., No. C12-2471 TEH, 2012 WL 3638608, at *2 (N.D. Cal. Aug. 22, 2012); Bottoni v. Sallie Mae, Inc., No. C 10-03602 LB, 2011 WL 3678878, at *2 (N.D. Cal. Aug. 22, 2011). The potential for unwarranted inferences arising from irrelevant allegations also causes prejudice which serves as a basis for striking allegations. Loughrey v. Landon, 381 F. Supp. 884, 888 (E.D. Pa. 1974) (striking portions of amended complaint).

In this case, the particular allegations to which this motion pertains are:

- Tencent’s data servers allegedly being open to, accessible by, and/or controlled by a foreign government (Notices at ¶¶ 10-11);
- U.S. export control permits issued to Tencent (Notices at ¶ 12);
- Tencent’s alleged contempt in opposition proceeding no. 91207516 (Notices at ¶ 16);
- Tencent’s alleged false statements to the U.S. Patent and Trademark Office in connection with U.S. trademark registration no. 3159635 for the mark QQ (Stylized), which has not been opposed by Delson or invoked by Tencent in any Board proceedings against Delson (Notices at ¶ 18);
- Purported threats that Tencent was allegedly “involved in” against Opposer’s principal, Willie Lu, and his family (Notices at ¶ 19); and
- Tencent’s alleged attempt “to use the lengthy and expensive TTAB proceedings [proceeding no. 91207516] including motions and requests, etc. as a weapon, to financially attack and harass American small business like Delson and American Inventor like Prof. Willie W. Lu” (Notices at ¶ 20).

These allegations are not only unfounded but are impertinent and immaterial to the parties' dispute. Delson has not articulated in its pleadings or otherwise principled reasons for why such allegations are relevant. Tencent is particularly concerned that allowing these allegations to remain in the pleading will result in prejudice against Tencent based on (1) an undue burden created by conducting discovery into irrelevant topics and (2) unwarranted inferences to Tencent's detriment throughout the proceeding and at trial. Accordingly, Tencent files this motion to strike.

IV. CONCLUSION

For the foregoing reasons, Tencent respectfully requests that the Board grant its motion to strike paragraphs 10-12, 16, and 18-20 of the Notices.

Dated: June 24, 2016

Respectfully submitted,

WILSON SONSINI GOODRICH & ROSATI
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CERTIFICATE OF SERVICE BY MAIL

I, Elvira Minjarez, declare:

I am employed in Santa Clara County. I am over the age of 18 years and not a party to the within action. My business address is Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California 94304-1050.

I am readily familiar with Wilson Sonsini Goodrich & Rosati's practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence would be deposited with the United States Postal Service on this date.

On this date, I served this **MOTION TO STRIKE** on each person listed below, by placing the document described above in an envelope addressed as indicated below, which I sealed. I placed the envelope for collection and mailing with the United States Postal Service on this day, following ordinary business practices at Wilson Sonsini Goodrich & Rosati.

J. James Li
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Los Altos, CA 94022

I declare under penalty of perjury that the foregoing is true and correct. Executed at Palo Alto, California on June 24, 2016.



Elvira Minjarez