

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

BUO

Mailed: August 4, 2016

Opposition No. 91227686

Under Armour, Inc.

v.

ICANIWILL AB

Benjamin U. Okeke, Interlocutory Attorney:

Opposer's motion, filed July 11, 2016, to strike Applicant's third affirmative defense alleging, "the identical marks at issue before the Trademark Trial and Appeal Board have more than demonstrated that they are fully capable of peacefully co-existing on the Register in Europe without a single [sic] incident of confusion so too should they be capable of doing the same in the United States," 4 TTABVUE 12, ¶ 25, is **GRANTED** as conceded, because Applicant failed to respond thereto.¹ Trademark Rule 2.127(a); *Central Mfg., Inc. v. Third Millennium Tech., Inc.*, 61 USPQ2d 1210

¹ We note, however, that the result would have been the same had the Board considered Opposer's motion on the merits. The question before the Board is registrability in the United States. Information concerning a party's foreign use of its involved mark is usually irrelevant to the issues in a Board proceeding.

Additionally, the Board notes that with two exceptions not applicable here, exhibits attached to a pleading are not evidence on behalf of the party to whose pleading the exhibits are attached unless identified and introduced in evidence as an exhibit during the period for the taking of testimony. Trademark Rule 2.122(c). Therefore, the exhibits attached to the answer have been given no consideration.

(TTAB 2001); *Boston Chicken, Inc. v. Boston Pizza Int'l, Inc.*, 53 USPQ2d 1053 (TTAB 1999).

Accordingly, Applicant's **Third Affirmative Defense (paragraph 25) stands STRICKEN** from the answer and will be given no further consideration.

Dates remain as set in the Board's May 4, 2016 order.

In each instance, a copy of the transcript of any testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of taking of that testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.