



TTAB

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

Kapalua Land Company, Ltd.)	
)	
Petitioner)	Cancellation No. 92/040,092
)	
v.)	
)	
Kapalua Strickwaren GmbH Ltd.)	
)	
Respondent)	
)	
)	

**PETITIONER’S OBJECTION TO RESPONDENT’S MOTION FOR LEAVE TO
AMEND RESPONDENT’S RESPONSE TO PETITIONER’S FIRST SET OF
ADMISSIONS**

Petitioner hereby files this objection to Respondent’s Motion to Amend its Responses to Petitioner’s First Set of Admissions and requests that The Trademark Trial and Appeal Board (“Board”) deny Respondent’s Motion.

The Board permits a party to amend an admission if such amendment does not cause undue prejudice to the opposing party. TBMP §525. There is no question that Petitioner will suffer undue prejudice if Respondent is permitted to amend its responses to Petitioner’ requests for admissions.

As detailed in Petitioner’s Memorandum in Support of its Summary Judgment Motion filed on June 13, 2006 and its Reply submitted in support of its Motion, which are incorporated herein by reference, Respondent has waited until the eleventh hour to amend its admissions. Respondent has had Petitioner’s admission requests since January 2006. Not until sometime after June 13, 2006, the date Petitioner filed its Motion for Summary Judgment, did Respondent decide its answers to its admissions were allegedly incorrect.



09-05-2006

Respondent's decision to allegedly not search its records for months and months should not control the Board's proceeding.¹

Petitioner relied on Respondent's original responses to Petitioner's requests for admissions to prepare its Motion for Summary Judgment.² Any amendment to Respondent's discovery requests wastes Petitioner's time and resources, and thereby prejudices Petitioner. If the Board grants Respondent's motion, discovery will have to be reopened for the limited purpose of permitting Petitioner the opportunity to determine the veracity of Respondent's amended admissions.

This limited discovery will require that Petitioner depose Mr. Reusch to determine the veracity of his varied and conflicting statements. Mr. Reusch is in Germany and seemingly not available for deposition in the United States. Any deposition will have to be conducted by written questions that do not provide an opportunity for Petitioner to observe Mr. Reusch's demeanor when responding to deposition questions. The written questions will be reviewed and essentially revised by Respondent's counsel. Petitioner will not be able to obtain essential information from Mr. Reusch – namely his veracity – based on his physical location.

Moreover, Respondent has decided to wait until just before the opening of Petitioner's testimony period to allegedly review its files and change its admissions. This motion to amend is late.

¹ As detailed in Petitioner's Summary Judgment papers, Respondent had Petitioner's interrogatories since October 2006. Those interrogatories sought the same information sought in Petitioner's requests for admissions. Therefore, Respondent's allegedly failure to search its records runs from October 2005.

² Respondent's February 2006 responses were consistent with Respondent's original verified responses to Petitioner's First Set of Interrogatories and Respondent's Answer to the Amended Petition to Cancel. Petitioner has relied on three different documents from Respondent to prepare and file its Motion for Summary.

Respondent's amended admissions also affect that portion of Petitioner's Summary Judgment Motion regarding fraud. Cf. Hobie Designs Inc. v. Fred Hayman Beverly Hills Inc., 14 USPQ2d 2064, 2064-2065 (TTAB 1990). By granting Respondent's motion to amend, Petitioner will always be in the position of wondering if Respondent will need yet another opportunity to change its responses to discovery and if further reopening of discovery will be required.

Last, Respondent has not sought to amend its Answer to the Amended Petition to Cancel. As seen from Petitioner's Summary Judgment papers, that May Answer remains of record. It defies logic to have that pleading and then permit inconsistent admissions to become of record. Respondent cannot have it both ways. The current record before the Board is consistent. By permitting Respondent to amend its admissions, the record will be inconsistent and clearly inaccurate.

For the above reasons, Petitioner respectfully requests that the Board deny Respondent's motion to amend its admissions.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Leigh Ann Lindquist, a partner with Sughrue Mion, PLLC hereby certify that on this 5TH day of September, 2006, a true and correct copy of the foregoing **Petitioner's Objection To Respondent's Motion For Leave To Amend Respondent's Response To Petitioner's First Set Of Admissions** has been properly served, via First Class U.S. Mail, postage prepaid to:

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Leigh Ann Lindquist