

ESTTA Tracking number: **ESTTA154638**

Filing date: **08/02/2007**

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

Proceeding	92047546
Party	Plaintiff J & D Brush Co., Inc.
Correspondence Address	Howard C. Miskin Stoll, Miskin & Badie 350 Fifth Avenue, Suite 4710 New York, NY 10118 UNITED STATES howard@smbtlaw.com
Submission	Other Motions/Papers
Filer's Name	Howard C. Miskin
Filer's e-mail	howard@smbtlaw.com, yasmin@smbtlaw.com
Signature	/hcm/
Date	08/02/2007
Attachments	motion to strike Answer.pdf (5 pages)(18336 bytes) hcm decl.pdf (2 pages)(11575 bytes) Motion to strike answer - Exhibit A.pdf (1 page)(10976 bytes) Motion to strike answer - Exhibit B.pdf (1 page)(29458 bytes) Motion to strike answer - Exhibit C.pdf (2 pages)(41327 bytes)

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

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J & D BRUSH CO., INC.	:	
	:	
Petitioner,	:	Cancellation No. 92047546
	:	
- against -	:	(Reg. No. 3,020,126)
	:	
EXPORT DEPOT USA CORP.	:	
	:	
Registrant.	:	
-----X		

MOTION TO STRIKE ANSWER

Pursuant to 37 C.F.R. § 10.14(c), J & D Brush Co., Inc. (hereinafter “J & D Brush” or “Petitioner”), requests the Board to strike the Answer filed by Registrant Export Depot USA Corp.’s Attorney, Daniel Levy, on the grounds of Mr. Levy is ineligible to practice before the Trademark Trial and Appeal Board.

I. INTRODUCTION

J & D Brush filed this Cancellation proceeding against Export Depot USA, Corp. (hereinafter “Export Depot USA” or “Registrant”) on May 18, 2007, on the grounds of abandonment, priority of use, likelihood of confusion and dilution. Registrant, through its attorney, filed an Answer on June 27, 2007. Registrant is an inactive New York Corporation. See, Misikin Decl. Exhibit A. Daniel Levy, Registrant’s attorney, has a business address of 991 Paul Emile Barbe, Deux-Montagnes, Quebec, Canada, J7R 7E1. See, Registrant’s Answer. Furthermore, Daniel Levy is not qualified to practice before the Canadian Intellectual Property Office, because he is not a registered trademark agent

in Canada. See, Miskin Decl. Exhibit B and ¶ 4. Accordingly, since Mr. Levy is not a Canadian registered trademark agent, he has no right to appear before this Board and hence, the Board should strike Registrant’s Answer prepared and filed by Daniel Levy.

II. ARGUMENT

A. Practice of Foreign Attorneys Before the Trademark Trial and Appeal Board

37 CFR 10.14 (c) provides, in relevant part:

Any foreign attorney or agent not a resident of the United States who shall prove to the satisfaction of the Director that he or she is registered or in good standing before the patent or trademark office of the country in which he or she resides and practices, may be recognized for the limited purpose of representing parties located in such country before the Office in the presentation and prosecution of trademark cases, provided: The patent or trademark office of such country allows substantially reciprocal privileges to those permitted to practice in trademark cases before the United States Patent and Trademark Office.

The Trademark Trial and Appeal Board Manual of Procedure § 114.06 states that “[a]n individual not entitled, under 37 CFR 10.14(a), (b) or (c), to practice before the Office in trademark cases, will not be permitted to represent a party in a proceeding before the Board.”

B. Registrant’s Attorney Is Not Registered or In Good Standing Before the Canadian Intellectual Property Office

The first requirement for Registrant’s attorney to practice before the Board, is that he is registered or in good standing before Canadian Intellectual Property Office (“CIPO”).

In Canada, registered trademark agents are the only professionals permitted under the Trade-marks Act (RSC 1985 c.T-13) to represent and act on behalf of trademark owners to obtain trademark registrations before the Trademarks Office. Canadian Trademark Rules 18 and 21 outline the procedures for sitting for the qualifying examination, the passing of which will allow an individual to obtain a registration as a “Trademark Agent.” See, Miskin Decl. Exhibit B.

CIPO lists the registered trademark agents on its website. Mr. Daniel Levy is not listed among the registered agents, hence he is not qualified to practice before CIPO. See, Miskin Decl. ¶ 4. Therefore, Daniel Levy does not meet the first requirement as a foreign attorney to practice before the Board.

C. Export Depot USA Corp. is a Domestic Corporation

The second requirement for Daniel Levy to represent Export Depot USA before the Board is that he may be recognized for the limited purpose of representing parties located in Canada. In its Answer, Export Depot USA specifically asserts that it is a North Carolina Corporation.¹ See, Registrant’s Answer.

In view of the fact that Registrant is a domestic corporation, it should not be allowed to be represented by a Canadian attorney. Therefore, Daniel Levy does not meet the second requirement as a foreign attorney to practice before the Board.

¹ A search of North Carolina’s Department of Secretary of State’s website for a corporation named “Export Depot” or “Export Depot USA” did not yield any results. However, a similar search on New York State Department of State’s Division of Corporations’ online Entity Status information states that Export Depot USA Corp. is inactive. See, Miskin Decl. Exhibits A and C.

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	:	
EXPORT DEPOT USA CORP.	:	
	:	
Registrant.	:	
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CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2007, a copy of the Petitioner's Motion to Strike Registrant's Answer was served upon Registrant by first class mail, postage prepaid, to the Registrant's correspondence address of record, listed below:

Export Depot USA
205 West Service Rd.
Champlain, NY 12919

By: /s/
 YASMIN POOYAN

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	:	
EXPORT DEPOT USA CORP.	:	
	:	
Registrant.	:	
-----X	:	

DECLARATION OF HOWARD C. MISKIN

I, HOWARD C. MISKIN, declare as follows:

1. I am counsel for Petitioner in the above-referenced Cancellation proceeding.
2. Annexed as Exhibit A is a true copy of the results page of a search for “Export Depot USA” on the Corporation’s Division of New York State Department of State’s website.
3. Annexed as Exhibit B is a true copy of “How to Become A Registered Trademark Agent” webpage on Canadian Intellectual Property Office’s website, illustrating the Trademark Rules regarding trademark agent registration requirements.
4. Daniel Levy is not listed as a registered trademark agent on the “Trade-Marks Agents List” webpage on Canadian Intellectual Property Office’s website.

NYS Department of State

Division of Corporations

Entity Information

Selected Entity Name: EXPORT DEPOT USA CORP.

Selected Entity Status Information

Current Entity Name: EXPORT DEPOT USA CORP.

Initial DOS Filing Date: MAY 16, 2003

County: CLINTON

Jurisdiction: NEW YORK

Entity Type: DOMESTIC BUSINESS CORPORATION

Current Entity Status: INACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

FEDEX TRADE NETWORK
205 WEST SERVICE ROAD
CHAMPLAIN, NEW YORK, 12919

Chairman or Chief Executive Officer

GUIL HETZRONI
205 WEST SERVICE RD
CHAMPLAIN, NEW YORK, 12919

Principal Executive Office

EXPORT DEPOT USA CORP.
205 WEST SERVICE RD
CHAMPLAIN, NEW YORK, 12919

Registered Agent

LAURA FAUBERT
FEDEX TRADE NETWORK
205 WEST SERVICE ROAD
CHAMPLAIN, NEW YORK, 12919

NOTE: New York State does not issue organizational identification numbers.

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How to Become a Registered Trade-mark Agent

[Rule 21 of the *Trade-marks Regulations*](#) explains how to have one's name entered on the list of trade-mark agents.

Any person wishing to sit for the qualifying examination must meet the qualifications set out in [Rule 18 of the *Trade-marks Regulations*](#). Previous years' examinations may be of assistance and are available by [contacting us](#) or you may [order online](#).

To obtain more information about [tutorials](#) for the examination, please contact the following institution:

[Intellectual Property Institute of Canada](#)
60 Queen Street, Suite 606
Ottawa, ON K1P 5Y7
Tel.: (613) 234-0516

Last Modified: 2007-07-16



[Important Notices](#)



Elaine F. Marshall
Secretary

North Carolina

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PO Box 29622 Raleigh, NC 27626-0622 (919)507-2000

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Elaine F. Marshall
Secretary

North Carolina

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