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

Proceeding	92052950
Party	Defendant King Par, LLC
Correspondence Address	MARSHALL G MACFARLANE 301 E LIBERTY , SUITE 680 ANN ARBOR, MI 48104 UNITED STATES macfarlane@youngbasile.com
Submission	Motion to Strike
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Date	12/21/2011
Attachments	MotiontoStrike.pdf (3 pages)(201086 bytes)

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

KING PAR, LLC,)	
)	CANCELLATION NO. 92052163
v)	
)	
JOHN S. FRANKLIN)	
)	
AND)	
)	
JOHN S. FRANKLIN,)	
)	CANCELLATION NO. 92052950
v)	
)	
KING PAR, LLC)	
)	

**PLAINTIFF/COUNTERCLAIM DEFENDANT’S MOTION TO STRIKE
DEFENDANT/COUNTERCLAIM PLAINTIFF’S EVIDENTIARY MATTER**

Now comes the above-named Plaintiff/Counterclaim Defendant, by and through its attorney, and hereby moves to strike the Defendant/Counterclaim Plaintiff’s evidentiary matter attached to its Trial Brief as filed with the Board on November 1, 2011, for the following reasons:

In its trial brief, Defendant/Counterclaim Plaintiff offers in evidence several documentary exhibits, and a CD of a voice message left on an answering machine.

Plaintiff/Counterclaim Defendant submits that none of the evidence so submitted is admissible.

The Defendant/Counterclaim Plaintiff has conducted no trial testimony, and has not presented deposition or trial testimony. In its trial brief, Defendant/Counterclaim Plaintiff submitted a number of proposed exhibits, which Plaintiff/Counterclaim Defendant contends are not entitled to consideration.

Exhibits and other evidentiary materials attached to a party's brief in a case can be given no consideration unless they were properly made of record during the time of taking testimony. *37 C.F.R. 2.122(c)*. Further, factual statements made in a party's brief in a case cannot be given consideration unless they are supported by evidence properly introduced. *Electronic Data Systems Corp. v EDSA Micro Corp.*, 23 USPQ 2d 1460 (TTAB 1992). On this basis, with the exception of documents identified as exhibits in a plaintiff's trial testimony (King Par's 2010 catalog), none of the exhibits proposed by Defendant/Counterclaim Plaintiff are properly before the Court and should be stricken. *Plus Products v Physicians Formula Cosmetics, Inc.*, 198 USPQ 111, 112 (TTAB 1978).

Therefore, Plaintiff/Counterclaim Defendant requests that the Defendant/Counterclaim Plaintiff's evidentiary matter submitted with his trial brief and identified as Exhibits A-G and I be stricken from the record.

Respectfully submitted,

/Marshall G. MacFarlane/

Marshall G. MacFarlane

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Attorneys for Plaintiff/CounterclaimDefendant

DATED: December 21, 2011

CERTIFICATE OF MAILING

I hereby certify that this correspondence: **PLAINTIFF/COUNTERCLAIM DEFENDANT'S MOTION TO STRIKE DEFENDANT/COUNTERCLAIM PLAINTIFF'S EVIDENTIARY MATTER**, is being filed with the TTAB electronically, on December 21, 2011.

/Marshall G. MacFarlane/
Marshall G. MacFarlane

CERTIFICATE OF SERVICE

I hereby certify that this correspondence: **PLAINTIFF/COUNTERCLAIM DEFENDANT'S MOTION TO STRIKE DEFENDANT/COUNTERCLAIM PLAINTIFF'S EVIDENTIARY MATTER**, is being deposited with the United States Postal Service, 1st Class Mail, postage prepaid, in an envelope addressed to Douglas M. Kautzky, 3868 Carson Street, Suite 105, Torrance, California 90503, on December 21, 2011.

/Marshall G. MacFarlane/
Marshall G. MacFarlane