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

Proceeding	92058956
Party	Defendant 578539 B.C. Ltd.
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Attachments	Maico Response.pdf(53944 bytes )

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

3 Registration No. 4,156,487

4 Mark: MAICO and Design

5 \_\_\_\_\_ )  
6 **J. GARY KORTZ,** )

7       Petitioner, )

8       v. )

9 **578539 B.C Ltd.,** )

10       Respondent. )  
11 \_\_\_\_\_ )

Cancellation No. 92058956

**RESPONSE TO AMENDED  
AMENDED OPPOSITION TO  
MOTION FOR JUDGMENT ON THE  
PLEADINGS**

12               Respondent hereby responds to the “Amended Opposition to Respondent’s Motion For  
13 Judgment on the Pleadings.” This pleading should not be considered by the Board and the case  
14 should be dismissed because Petitioner has not complied with the Board’s Order of March 30,  
15 2016.

16               In its Order, the Board granted in large part Respondent’s Motion for Judgment on the  
17 Pleadings. Nonetheless, it permitted Petitioner to refile a Petition for Cancellation on two issues  
18 (non-ownership and likelihood of confusion), *“failing which the petition to cancel will be*  
19 *dismissed with prejudice.”* (Order at 11)(emphasis added.) The new Petition was due fifteen days  
20 from the date of the Order. The Board cautioned, however, that:

21               With respect to any amended pleading, Petitioner and its counsel are reminded  
22 that under Rule 11 of the Federal Rules of Civil Procedure, they are certifying that  
23 all claims and other legal contentions asserted therein are warranted by existing law  
24 or by a nonfrivolous argument for the extension, modification, or reversal of existing  
law. See Fed. R. Civ. P. 11

1           Simply put, Petitioner has not complied with the Board's Order. He did not file a new  
2 Petition within fifteen days as Ordered. Instead, he filed what purports to be an amended  
3 opposition to Respondent's original motion.

4           There is no provision in the Board's Rules for filing an amended opposition brief.  
5 Moreover, the brief itself contains unauthenticated hearsay attachments that are wholly improper  
6 on a motion for judgment on the pleadings. In light of the Board's admonition about compliance  
7 with Rule 11, the filing of the brief is breathtaking.

8           The brief illustrates why Petitioner can never file an amended Petition that complies with  
9 Rule 11. The original petition argued that the mark was generic and the Board dismissed this  
10 claim. (Order at 6-7.) Petitioner should not be permitted to plead the opposite, namely, that  
11 Petitioner or a third party actually owns the mark. *See Airs Aromatics v. Victoria's Secret Store*  
12 *Brand Management, Inc.*, 744 F.3d 595, 600 (9th Cir. 2014) (repleaded Complaint cannot  
13 contradict the original allegations); *Dragon Bleu (SARL) v. VENM, LLC*, 112 U.S.P.Q.2d 1925,  
14 1929 n.10 (TTAB 2014) (Board did not grant leave to replead fraud claim due to futility and lack  
15 of plausibility based on recited facts). Without ownership he does not have a claim.

16           But that is exactly what Petitioner now intends to do. He now claims that the mark is not  
17 generic, rather, it is owned by a third party, MAICO ONLY, who acquired the United States rights  
18 from an individual named Ronnie Smith. (Amended Opposition at 7-9). What Petitioner and his  
19 counsel do not tell the Board is that MAICO ONLY is Mr. Eric Cook (See Petition for Cancellation  
20 in Proceeding No. 92060994); *see* Order of December 2, 2015 in *Eric K. Cook v. 578539 B.C Ltd.*,  
21 Cancellation No. 92060994 at 3-4. **They also do not tell the Board that Mr. Cook himself did**  
22 **not argue that he owned the mark.** *Id.* at 5-6. That was one reason that the Board dismissed  
23 Mr. Cook's Petition with prejudice.

1 Now, Petitioner and his counsel – *the same counsel who also represented Mr. Cook* –  
2 want to argue that Mr. Cook owns the mark that he said he did not own, and they want to  
3 prosecute Mr. Cook’s case which has already been dismissed with prejudice. That is bizarre,  
4 unprecedented, inconsistent with counsel’s obligations under Rule 11 and should not be  
5 permitted.

6 The Petition should be dismissed with prejudice.

7 Respectfully submitted,

8 **LAW OFFICE OF PAUL W. REIDL**

9 

10 By: \_\_\_\_\_

11  
12 Dated: April 18, 2016

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