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

Proceeding	92060328
Party	Plaintiff L.A. Gem and Jewelry Design, Inc.
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Date	03/05/2015
Attachments	LAR08-061T Motion to Strike.pdf(122720 bytes )



This motion is based upon the attached brief, the Petition for Cancellation filed by Petitioner on November 5, 2014 (Dkt. No. 1), Respondent's purported answer and amended answer, filed on February 19, 2015 (Dkt. No. 9) and March 3, 2015 (Dkt. No. 10), respectively, and such other argument and evidence as may be presented to the Board on this motion.

## I. ARGUMENT

On November 14, 2014, Petitioner filed its Petition for Cancellation of the LOVE IS FOREVER registration for "key rings of precious metal; ornaments, namely, earrings, precious metal insignias, precious metal badges, precious metal medals, tiepins, necklaces, bracelets, pendants, jewelry brooches, medals, rings to wear on finger, medallions; cuff links; clocks and watches, namely, wristwatches, table clocks, watches for carrying in pockets, clocks for vehicles, stop watches, wall clocks, alarm clocks" in International Class 14. Petitioner's claim for relief, in 12 numbered paragraphs, is based upon Registrant's failure to use the LOVE IS FOREVER mark in commerce, or that it completely ceased use of the mark, in connection with the goods identified in the Registration for a period of at least 3 consecutive years. Further, Petitioner has been damaged and will continue to be damaged if the Registered Mark is permitted to remain on the Principal Register because the Registered Mark stands as a bar to Petitioner's ability to federally register and protect its LOVE IS FOREVER mark for its jewelry goods. *See* Petition for Cancellation, Dkt. No. 1.

On February 13, 2015, Respondent, appearing pro se, served an untitled document by mail that purports to be an "Answer." On March 3, 2015, Respondent electronically filed an Amended Answer. These documents are "answers" in name only because they do not permit Petitioner to determine which of its allegations are admitted or denied, or what claims are at

issue. For the reasons set forth below, the purported answers should be stricken and Applicant should be required to file an answer that conforms to the requirements of the Federal Rules of Civil Procedure.

**A. APPLICANT’S PURPORTED ANSWERS SHOULD BE STRICKEN**

Rule 8(b) of the Federal Rules of Civil Procedure provides in pertinent part as follows:

“A party shall state in short and plain terms the party’s defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder.”

Fed. R. Civ. P. 8(b).

Under Rule 8(b), an applicant’s answer must be directly responsive to the Petition for Cancellation; it should not merely contain arguments in the nature of a brief. *See Thrifty Corporation v. Bomax Enterprises*, 228 USPQ 62, 63 (TTAB 1985) (requiring Applicant to refile its answer to Opposer’s notice of opposition because Applicant’s filing lacked a specific response to each averment in the notice of opposition and was “basically argumentative rather than a proper responsive pleading to the notice of opposition”). The Respondent clearly did not meet this standard because as each paragraph of the “Answer” contains bare and conclusory assertions or arguments. Further, the “Answer” does not contain specific responses to each of the averments in Opposer’s Petition for Cancellation, but instead contains a confusing recitation of events that may or may not have occurred and a “hypothetical” argument of “obstruction of business” in an attempt to convince the Board why the registration should not be cancelled. These bald assertions do not provide Petitioner or the Board with fair notice of whether

Respondent admits or denies the allegations, nor and does not plead the elements necessary to establish the affirmative defenses. As such, these assertions and “defenses” are not properly pleaded as an answer and affirmative defenses, not sufficiently founded on rules or case law, and should be stricken.

A respondent is allowed to amend its answer once as a matter of course within twenty-one days after serving it. Fed. R. Civ. P. 15(a); TBMP § 507. Respondent’s March 3, 2015 amended “Answer” is incomplete because it did not include a single, complete version of the intended amended answer. Instead, Respondent amended and served only amended pages 1, 7, 16, 29, and 34 of the original “answer.” Since Respondent’s March 3, 2015 amended “Answer” is incomplete, it should be stricken.

As set forth above, Respondent’s purported answer is ambiguous, unintelligible, uncertain, legally insufficient and/or improper. Therefore, it is appropriate for it to be stricken, prior to the parties expending their time, and the Board’s time, on unnecessary discovery, testimony, argument and briefing. Applicant should be ordered to file an answer that is in proper form and conforms to the requirements of Rule 8(b), and that is properly served upon Petitioner’s counsel.

Dated: March 5, 2015

Respectfully submitted,

MILORD & ASSOCIATES, PC

/Milord A. Keshishian/

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on March 5, 2015, I caused a true and correct copy of the foregoing **MOTION TO STRIKE** sent via First Class International Mail, postage prepaid, to Registrant's Correspondence of Record as follows:

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Hodogaya-ku, Yokohama-shi  
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