

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500

BUO

Mailed: June 12, 2015

Cancellation No. 92060328

*L.A. Gem and Jewelry Design, Inc.*

*v.*

*Souki Manufacturing Inc.*

**Benjamin U. Okeke, Interlocutory Attorney:**

Now before the Board is Petitioner's motion, filed March 5, 2015, to strike Respondent's answer to the petition to cancel. Additionally, Petitioner requests that the Board order Respondent to "file an answer that is in proper form and conforms to the requirements of Rule 8(b)," which the Board construes as a motion under Fed. R. Civ. P. 12(e) for a more definite statement. Petitioner asserts that the answer should be stricken because "the purported answers consist entirely of immaterial matter that fail [sic] to conform to the requirements of Rule 8(b) of the Federal Rules of Civil Procedure," and are "ambiguous, unintelligible, uncertain, legally insufficient and/or improper." 11 TTABVUE 2 and 5. Respondent countered by

submitting a proposed amended answer, which also contained arguments against Petitioner's instant motion. The motion has been fully briefed.<sup>1</sup>

The Board has considered the parties' submissions and presumes the parties' familiarity with the arguments made therein. The parties' arguments will not be summarized herein except as necessary to explain the Board's decision.

The Board's review of the answer and proposed amended answer reveals that both submissions present substantial argument regarding the merits of the case and are also in improper format. Respondent's answer fails to provide fair notice of its claimed defenses and deprives Petitioner and the Board of the ability to expeditiously identify the issues raised.<sup>2</sup> *See* TBMP § 506.01 (purpose of pleadings is to provide fair notice of the claims and defenses asserted). An answer should merely state whether the claims of the complaint are admitted or denied, or that Respondent is without sufficient information to admit or deny the allegations in the petition to cancel. *See* Trademark Rule 2.106(b)(1); Fed. R. Civ. P. 8(b); *Hewlett-Packard Co. v. Olympus Corp.*, 931 F.2d 1551, 18 USPQ2d 1710, 1713 (Fed. Cir. 1991). Thus, the arguments in Respondent's answer will be given no consideration.

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<sup>1</sup> Petitioner's reply brief filed April 3, 2015, is noted. However, Respondent should note that its submissions of April 6, 7, 14, 16, 17 and 19, 2015, have been given no consideration, because a nonmovant is only entitled to file an opposition to a motion, and is not entitled to file a "reply" brief or a surreply. *See* Trademark Rule 2.127(a) (after the movant's reply brief, "[t]he Board will consider no further papers in support of or in opposition to a motion"); TBMP § 502.02(b) (2014).

<sup>2</sup> Additionally, the answer was not accompanied by the required certificate of service. *See* Trademark Rule 2.119(a). Although Respondent subsequently filed a separate submission evidencing service on Petitioner, the better practice is to include and attach the certificate of service to the motion or response. Respondent is also reminded that all papers filed before the Board in an *inter partes* proceeding must be served on the opposing party. Information regarding certificates of service is provided at the end of this order; Respondent is strongly encouraged to review that information.

(Respondent will have an opportunity to argue the merits of the case at trial or in connection with a dispositive motion.)

Accordingly, Petitioner's motion to strike the Respondent's answer is **GRANTED**, and Respondent's answer filed February 19, 2015, is **STRICKEN**. Additionally, Petitioner's request that the Board order Respondent to file a conforming answer under Fed. R. Civ. P. 12(e) is **GRANTED**, to the extent that Respondent has **THIRTY DAYS** to file a second amended answer.<sup>3</sup>

- *Format*

An answer should bear at its top the heading "IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD," followed by the name of the proceeding (e.g., "*L.A. Gem and Jewelry Design, Inc. v. Souki Manufacturing Inc.*"), the proceeding number (e.g., "Cancellation No. 92060328"), and a title describing the nature of the paper (e.g., "ANSWER," "ANSWER AND COUNTERCLAIM," etc.). See TBMP § 311.01(a).

As stated, the answer must contain admissions or denials of the allegations in the complaint and may include any defenses to those allegations. Respondent should not argue the merits of the allegations found in the complaint but rather should simply state, as to each of those allegations, that the allegation is either admitted or denied. See Trademark Rule 2.106(b)(1); Fed. R. Civ. P. 8(b); *Turner Entm't Co. v. Ken Nelson*, 38 USPQ2d 1942 (TTAB 1996) (applicant's answers were

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<sup>3</sup> Additionally, it appears that Respondent seeks to have the present case consolidated with Cancellation No. 92058656 ("the '656 cancellation"). However, consolidation of the two proceedings would be inappropriate. Although both proceedings involve Registration No. 3811074, the parties to the '656 cancellation are not identical to the parties herein. Therefore, the Board will not consolidate the two proceedings.

argumentative and nonresponsive and Board was ultimately forced to interpret the answer). If Respondent does not have sufficient information to admit or deny an allegation, Respondent may so state, and this statement will have the effect of a denial as to that allegation.

Just as the complaint should be made in numbered paragraphs setting forth the basis of Petitioner's claim of damage, Respondent's admissions or denials should also be made in numbered paragraphs corresponding to the numbered paragraphs in the complaint. *See* TBMP § 311.02(a).

Respondent may also assert any affirmative defenses it believes are appropriate. Affirmative defenses may include unclean hands, laches, estoppel, acquiescence, fraud, mistake, prior registration (*Morehouse*) defense, prior judgment, or any other matter constituting an avoidance, amplification or affirmative defense. *See* Trademark Rule 2.106(b)(1); *Order of Sons of Italy in Am. v. Profumi Fratelli Nostra AG*, 36 USPQ2d 1221, 1222 (TTAB 1995).

For reference, an appropriate answer would appear as follows:

Paragraph 1. Denied.

Paragraph 2. Admitted.

Paragraph 3. Admitted as to <insert part of allegation  
admitted>, but denied as to the remainder.

...

Further, if Respondent is without sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, it should so state and this will have the effect of a denial, *e.g.*:

Paragraph 4. Respondent is without sufficient knowledge to form a belief as to the truth or falsity of the allegations of paragraph 4, and therefore denies the same.

For additional information regarding the substance of an answer Respondent is referred to the Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) § 311.01 *et seq.*

Finally, the answer, as all other papers filed during this proceeding, must be signed by Respondent and served on Petitioner. *See* Trademark Rule 2.119(a)-(b). The answer must include proof that service has been made, *i.e.* a certificate of service, consisting of a statement signed by the filing party, or by its attorney or other authorized representative, clearly stating the date and manner in which service was made. Respondent should review the “*Pro Se* Information” section below, which includes a sample certificate of service. Again, the certificate of service should be attached to the filing to which it pertains, rather than being separately filed. Failure to include this proof of service with any papers filed may result in the Board not considering those papers. *See* Trademark Rule 2.119(a).

Accordingly, as previously stated, Respondent is allowed **THIRTY DAYS** from the issuance of this order to file an amended answer to the petition to cancel that conforms to Fed. R. Civ. P. 8(b) and 10(a) and (b). Failure to file and serve an acceptable answer before the expiration of this period may result in the entry of default judgment against Respondent.

Schedule

The proceeding is RESUMED. The remaining conferencing, disclosure, discovery and trial dates are reset as follows:

Deadline for Discovery Conference	8/9/2015
Discovery Opens	8/9/2015
Initial Disclosures Due	9/8/2015
Expert Disclosures Due	1/6/2016
Discovery Closes	2/5/2016
Plaintiff's Pretrial Disclosures	3/21/2016
Plaintiff's 30-day Trial Period Ends	5/5/2016
Defendant's Pretrial Disclosures	5/20/2016
Defendant's 30-day Trial Period Ends	7/4/2016
Plaintiff's Rebuttal Disclosures	7/19/2016
Plaintiff's 15-day Rebuttal Period Ends	8/18/2016

***Pro Se Information***

A. Representation

The Board notes that Respondent currently represents itself *pro se*, *i.e.* without assistance from a licensed attorney. It should be noted that, while Patent and Trademark Rule 11.14 permits any party to represent itself, **it is advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in a cancellation proceeding to secure the services of an attorney who is familiar with such matters.** The Patent and Trademark Office cannot aid in the selection of an attorney. In addition, as the impartial decision maker, the Board may not provide legal advice, though it may provide general procedural information.

B. Nature of Board Proceedings

A cancellation proceeding before the Board is similar in many ways to a civil action in a Federal district court. There are pleadings (petition to cancel, answers, and, sometimes, a counterclaim), a wide range of possible motions; discovery (a party's use of discovery depositions, interrogatories, requests for production of documents and things, and requests for admission to ascertain the facts underlying its adversary's case), a trial, and briefs, followed by a decision on the case. Unlike the case in a civil proceeding, the Board does not preside at the taking of testimony. Rather, all testimony is taken by deposition during the assigned testimony, or trial, periods, and the written transcripts, together with any exhibits, are then filed with the Board. No paper, document, or exhibit will be considered as evidence in the case unless it has been introduced in evidence in accordance with the applicable rules.

C. Electronic Resources

All parties may refer to the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), the Trademark Act, and the Trademark Rules of Practice, all available on the USPTO website, [www.uspto.gov](http://www.uspto.gov). The TTAB homepage provides electronic access to the Board's standard protective order, and answers to frequently asked questions. Other useful resources include the ESTTA filing system<sup>4</sup> for Board filings and TTABVUE for status and prosecution history.

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<sup>4</sup> Use of electronic filing with ESTTA — as the parties have done so far — is strongly encouraged. This electronic file system operates in real time and provides filers with confirmation that the filing has been received. When papers are filed through ESTTA the papers must still be served on the other party to the proceeding.

If the parties have questions about or need assistance with ESTTA, they may call the Board at (571) 272-8500 or (800) 786-9199 (toll free) from 8:30 a.m. until 5:00 p.m. (EST).

Compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel.

**D. Service of Papers**

Trademark Rule 2.119(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or the other party itself, if unrepresented, and proof of such service must be made before the paper will be considered by the Board. Consequently, copies of all papers which Respondent may file in this proceeding must be accompanied by a signed statement indicating the date and manner in which such service was made. The statement, whether attached to or appearing on the paper when filed, will be accepted as *prima facie* proof of service.

The following is an example of an acceptable Certificate of Service:

**Certificate of Service**

The undersigned certifies that a copy of the attached <describe filing> was served, by first class mail, upon opposer at the following address:

Milord A. Keshishian  
Milord & Associates PC  
2049 Century Park East, Suite 3850  
Los Angeles, CA 90067,

on <date>.

/Nobuhiko Minaki/

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While electronic filing is preferred, papers may also be filed by mail. The parties should refer to TBMP §§ 107-111 for information on filing by mail. If ESTTA filing is not possible for any reason, the filer should submit its papers by mail, with a certificate of mailing. *See* TBMP § 110 *et. seq.*