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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.
Correspondence Address	MILORD A KESHISHIAN MILORD & ASSOCIATES PC 2049 CENTURY PARK EAST, SUITE 3850 LOS ANGELES, CA 90067 UNITED STATES uspto@milordlaw.com
Submission	Other Motions/Papers
Filer's Name	Milord A. Keshishian
Filer's e-mail	uspto@milordlaw.com, stephanie@milordlaw.com
Signature	/Milord A. Keshishian/
Date	09/11/2015
Attachments	LAR08-061T Reply re Motion to Strike 9-11-15 Final.pdf(20211 bytes)

I. ARGUMENT

A. RESPONDENT DID NOT ADDRESS ANY OF THE ISSUES RAISED IN THE UNDERLYING MOTION AND THE PURPORTED ANSWERS ARE DEFECTIVE

Respondent's "Opposition" did not respond to the substantive argument advanced by Petitioner in its Motion, namely that, Respondent's purported "Answers" consist entirely of immaterial matter that fail to conform to the requirements of Rule 8(b) of the Federal Rules of Civil Procedure. Without enumerating the particulars and lengthy detailed assertions found in Respondent's "Opposition," both the "Answers" and "Opposition" fall far short of what is required under the rules of Court. For example, paragraph 6 of the Petition states, "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 the goods identified above." Respondent's response is as follows:

I have noted the allegations mentioned by plaintiff in the above paragraph 6. But I will deny the above paragraph 6 alleged by plaintiff as follows. Because regarding the allegations of the assigned attorney etc [sic] in the paragraph 6 in the above, it seems to be the consequent of the blunder/mistake of the assigned attorney etc [sic] And the above words of the assigned attorney in paragraph 6 are irrelevant to the merits/issues of this case. One of the issues/merits etc [sic] of the case is to be OBSTRUCTION OF BUSINESS and PRIVACY etc [sic], I think. And mentioning irrelevant things, approaching and accessing to me and filing of this case by the assigned attorney, Mr. Milord A. Keshishian, are heavy OBSTRUCTION OF BUSINESS and PRIVACY etc. And I have never abandoned and will never abandon the registered trademark LOVE IS FOREVER®, by all means, and will continue to prepare/bring up the business of the trademark step by step as a tortoise for wonderful-customers-to-be although being delayed and delayed due to the heavy OBSTRUCTION OF BUSINESS and PRIVACY etc. Mr. Milord A. Keshishian, it is highly recommendable for you to respectfully withdraw from this petition to cancel, OBSTRUCTION OF BUSINESS etc."

Courts have held that, "[p]leading deficiencies that warrant dismissal include (1) "confused and rambling narrative of charges and conclusions," (2) "untidy assortment of claims that are neither plainly nor concisely stated, nor meaningfully distinguished from bold conclusions, sharp harangues and personal comments..." *Poblete v. Goldberg*, 680 F. Supp. 2d 18 (D.D.C. Dec. 29, 2009) (dismissing with prejudice the complaint where the complaint was

comprised of confusing legal theories and insufficient factual pleadings). Here, Respondent filed two “Answers,” which do not meet the standard under Rule 8(b). The July 11, 2015 34 page “Answer” again presents substantial argument regarding the merits of the case and is not in proper format because it does not simply admit or deny the allegations in the Petition for Cancellation; and the July 12, 2015 “Amended Answer” is defective for the same reasons, and is also incomplete because it contains only amended pages of the Answer and not a full version of the document incorporating the amendment. Petitioner appreciates Respondent’s time and care in drafting his response, but finds it challenging to untangle and decipher Respondent’s documents, which are long-winded, repetitive, and convoluted, and fail to simply answer or deny the allegations.

A Respondent who proceeds on a pro se basis is held to the same legal standard as a party who is represented by counsel, which means that he must follow court rules and regulations, and are subject to the same sanctions or dismissal as a party represented by counsel. Petitioner again notes that on April 29, 2014, in Cancellation No. 92058656, Respondent was advised in the Order Setting Trial Dates to either retain counsel or become “familiar with the authorities governing this proceeding...” *Samuel Aaron, Inc. v. Souki Manufacturing Inc.*, Cancellation No. 92058656, ECF No. 8. Almost one year later, Respondent has not retained counsel, nor has he become familiar with the authorities which govern this proceeding.

Further, Interlocutory Attorney, Benjamin U. Okeke, provided Respondent with guidance as to the format for Respondent’s Second Amended Answer, the text of an appropriate answer, and directed to him to the TBMP for additional information. *See* ECF No. 23, pages 3-5. Mr. Okeke further warned Respondent that failure to file and serve an acceptable answer may result in the entry of default judgment against Respondent.

While entry of default judgment is a harsh remedy, such remedy is appropriate in situations like this where a party has repeatedly ignored the TTAB rules and recommendations. Respondent’s improper Answers should be stricken and default entered for failing to file and serve an acceptable answer.

B. RESPONDENT’S “OPPOSITION” SHOULD BE STRICKEN

Under Rule 2.127(a), a brief on a motion may not exceed 25 pages in length, including table of contents, index of cases, description of record, statement of the issues, recitation of the

facts, argument, and summary. Here, Petitioner further objects to Respondent's "opposition" brief because it is excessive at 39 pages in length. Even if Petitioner did not object to the length, the page limitation on a brief cannot be waived by action, inaction, or consent of the parties. *Saint-Gobain v. Minnesota Mining and Manufacturing Company*, 66 USPQ2d 1220 (TTAB 2005). Since Respondent's "Opposition" violates the Board's rule regarding page limitations for a brief on motion, it should not be considered.

II. CONCLUSION

For the reasons set forth above and in Petitioner's Motion, Petitioner respectfully requests that this Court strike Respondent's "Answers," give no consideration to its "Opposition" brief, and enter default judgment against Respondent for failure to file and serve an acceptable answer.

Dated: September 11, 2015

Respectfully submitted,

MILORD & ASSOCIATES, PC

/Milord A. Keshishian/

Milord A. Keshishian, Esq.

Attorneys for Petitioner

L.A. GEM AND JEWELRY DESIGN, INC.

2049 Century Park East, Suite 3850

Los Angeles, CA 90067

Telephone: (310) 226-7878

Facsimile: (310) 226-7879

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on September 11, 2015, I caused a true and correct copy of the foregoing **PETITIONER'S REPLY BRIEF IN SUPPORT OF ITS MOTION TO STRIKE RESPONDENT'S ANSWER AND AMENDED ANSWER AND ENTER DEFAULT JUDGMENT** sent via First Class International Mail, postage prepaid, to Registrant's Correspondence of Record as follows:

Souki Manufacturing, Inc.
326-6 Sakamoto-cho
Hodogaya-ku, Yokohama-shi
Kanagawa 240-0043
Japan
Email: mina-csj@nifty.com

/Milord A. Keshishian/
Milord A. Keshishian
2049 Century Park East, Suite 3850
Los Angeles, CA 90067
Telephone: (310) 226-7878
Facsimile: (310) 226-7879